United States Court of Appeals

for the Second Circuit

APPENDIX

74-1204--1296

ORIGINAL

B

P/S

(41432)

United States Court of Appeals

FOR THE SECOND CIRCUIT

COALITION FOR EDUCATION IN DISTRICT ONE, *et al.*,

Plaintiffs-Appellees,

vs.

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, *et al.*,

Defendants,

and

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK: GUMERSINDO MARTINEZ, ALICE SACHS, ELRICH A. EASTMAN, HERBERT J. FEUER, CHARLES AVARELLO, ELIZABETH CASSIDY, ANTHONY SADOWSKI, JOSEPH PREVITE, LILIAN PRADO, and SALVATORE SCLAFONI, individually and in their official capacity as members of the Board of Elections of the City of New York; COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT ONE; DONALD BROWN, JEROME GOODMAN, CAROLYN KOZLOWSKY, SAUL MILDWORM, RICHARD LEE PRICE and ADOLPH ROHER, individually and in their official capacity as members of the Community School Board of School District One,

Defendants-Appellants,

CAROLYN KOZLOWSKY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

[Volume I—Pages 1 to 220]

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Attorney for Plaintiffs-Appellees

UNITED STATES COURT OF APPEALS
FILED
MAR 19 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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...LITION FOR EDUCATION ET AL V. ...

DOCKET ENTRIES

73 Civ. 39...

	PROCEEDINGS	Date Judge
SEPT ,73	Filed summons and complaint.	
OCT ...73	Filed ANSWER for Deft. Kings County Dem. Comm. & Meade Esposito, etc.	JS
...73	Filed for Defts. Notice of Motion to dismiss complaint returnable 10/11/73	
...73	Filed Defts' Memorandum of Law in support of the Motion to dismiss the complaint.	
...73	Filed Order to Show Cause for Preliminary Injunction and Temporary Restraining Order returnable 10/15/73. Stewart, J.	
...73	Filed for Dx.County Dem.&Cunningham ANSWER to the complaint.	RJA
...73	Filed Certificate of Service. of John Ratliff	
...73	Filed Pltffs' Memorandum of Law in Opposition to Defts' Motion to dismiss the complaint	
...73	Filed for Defts. The Kings County Republican Committee and George Clark "ANSWER" to the Complaint.	GT&G
...73	Filed Affidavit of Service of Judith Suarez.	
...73	Filed Affidavit of Service of Jane Burrough	
...73	Filed Affidavit of Service of Fredric K. Gaumer	
...73	Filed Affidavit of Service of Daisy M. Klein.	
...73	Filed Affidavit of Service of Fredric Gaumer	
...73	Filed for Richmond County Democratic Committee & James Smith ANSWER to Complaint	AI
...7-73	Filed memo endorsed on Order to show cause filed Oct-9-73: The temporary restraining order contained herein is hereby extended until the 26th day of Oct, 1973 at 5 P.M. So ordered. -- Stewart, J. (m/n)	
...15-73	Filed Affidavit of Service of Duncan Whiteside.	
...9-73	Filed Temporary Restraining Order that pending the determination of plaintiffs' moti for a preliminary injunction previously filed, herein defendants Community School Board of District One and its members are temporarily restrained, as indicated herein, this order is w/o prejudice to any party applying for modificat of this order, etc. --So ordered, Stewart, J.	
...26-73	Filed Memo-endorsed on Order to Show cause dtd 10/9/73 — The Temporary Restraining Or contained herein is hereby extended pending determination of the application for preliminary Injunction - So Ordered - Stewart, J.	
...73	Hearing begun & cont. Oct-15,16,23,25,26,29 & 30 concluded Judge's Dec. Reserved.	
...15-73	Filed Notice of Motion and motion for lcass action determination, returnable 11/16/73.	
...30-73	Filed transcript record of proceedings dtd 10/18/73	
...29-73	Filed Defts. Affidavit in Opposition to Motion for Class Action Determination	
...26-73	Filed order that pending the final order herein on the merits of the action previously tried, defendants and their various members, etc. are temporarily stayed as indicated - Stewart, J. (CES)	
Jan.4-74	Filed INTERMIM ORDER--ORDERED that the May 1,1973 election for membership to the school board of Community School District One is declared invalid and the positions on the school board of Community School District One are declared to be vacant, ORDERED thqt pending the election of a new school board for Communi School District One, the Chancellor of the City School District of the City of N.Y. shall exercise the statutory and administrative powers of the school board of CommunitySchool District One and it is FURTHER ORDERED that this interim order is subject to modification upon application of any party. So ordered, Stewart, J. m/n	

(see pg. 3)

A

PROCEEDINGS

JAN 11,74	Filed OPINION #40208--ORDERED that the May1, 1973 election for membership to the schol board of Community School District One is declared invalid and the positions on the school board of Community School District One are declared to be vacant, funher ordered as indicated. So ordered, Stewart, J. m/n
Jan.14-74	Filed defts. Board of Education findings of fact and conclusions of law.(unsigned as per opinion #40208)
Jan.14-74	Filed pltfs. memorandum of law in support of motion for a preliminary injunction.
Jan.14-74	Filed pltfs. proposed finding s of fact and conclusions of law.
Jan.14-74	Filed pltfs. reply memorandum.
Jan.14-74	Filed stipulation that the annexed table contains an accurate characterization of the race or national origin of all witnesses, is made part of the record in this action.
Jan.14-74	Filed defts. affdt. of Doron Gopstein.
Jan.14-74	Filed defts. memorandum of law.
[illegible]	Filed transcript of proceedings held [illegible]
Jan.25-74	Filed deft. Carolyn Kazlowsky's notice of election proposals.
Jan.29-74	Filed summons with Marshal's return Served on:
	Board of Elections,City of NY by A. Crisolli on 9/25/73
	Alice Sachs by A. Crisalli on 9/25/73
	Elrich A. Eastman by A. Crisalli on 9/25/73
	Herbert Feuer by A. Crisalli on 9/25/73
	Charles Avarello by A. Crisalli on 9/25/73
	Gumersindo Martinez by (unsigned) on 9/25/73
	Elizabeth Cassidy by(unsigned) on 9/25/73
	Lilian Prado by E. Graboski on 9/25/73
	Joseph Previte by G. D'Amico on 9/24/73
	Anthony Sadowski by G. D'Amico on 9/24/73
	Republican County Committee,NY County by G. Parker on 9/20/73
	Vincent Albano,Jr. by G. Parker on 9/20/73
	Democratic County Committee,NYC County by E. Cortes on 9/20/73
	Frank Rosetti by E. Cortes on 9/20/73
	Patrick J Cunnigham by Mr. Jones on 9/20/73
	Democratic County Committee,Brons,County,by Mrs. Jones on 9/20/73
	Democratic County Committee by James Smith on 9/25/73
	James Smith by (unsigned) on 9/25/73
	Democratic County Committee,Queens County by Mary Plunken on 9/24/
	Mathew Troy by (unsigned) on 9/24/73
	Democratic County Committee,Kings County by F. Guligan on 9/20/73
	Meade Espositio by F. Guligan on 9/19/73
	Republican County Committee,Queens County by H. Jurgs on 9/19/73
	Melvin Klein by (unsigned) on 9/19/73
	Republican County Committee,Kings County by A. Pantaleone on 9/19/73
	George Clark by A. Pantaleone on 9/19/73
	Republican County Committee,Bronx County by J. Eagan on 9/20/73
	John D. Calandra by J. Eagan on 9/20/73
	Republican County Committee by E. McKee on 9/25/73
	Phillip J. Fitzpatrick by E. McKee on 9/25/73
	Board of Education of the City of N.Y. by D. Weiss on 9/20/73
	James Regan by D. Weiss on 9/20/73
	Murray Bergtraum by D. Weiss on 9/20/73
	Isaiah Robinson,Jr. by D. Weiss on 9/20/73
	Joseph Monserrat by D. Weiss on 9/20/73
	Seymour Lachman by D. Weiss on 9/20/73

B

D. C. 101 Criminal Continuation Sheet

PROCEEDINGS

Salvatore Sclafani by E. Graboski on 9/25/73
Community School Board of School District One by F Barrett on 10/2/73
Carolyn Kozlowsky by (unable) on 9/25/73
Gerome Goodman by(unable) on 10/31/73
Donald Brown by (unable) on 1/11/74(left with superintendent)
Adolf Roher byA. Roher on 10/15/73
Richard Price by (unable) on 11/19/73
Saul Mildworm by(unable) on 10/31/73
Ann Green by A. Prisalli on 9/25/73

1.30-74 Filed notice of appearance by Josph Frost that he appears for the deft Carolyn Kozlowsky.

1.29-74 Filed deft. Carolyn Kozlowsky notice of appealto the USCA from the Order of this court dated Jan. 11,1974 declaring invalid the election of school board members of NYC Community School Board District held on May 1, 1973,etc. as indicated.(copies mailed).

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [signature]
Deputy Clerk

d

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

CASE NO. 73 Civ. 3983

JUDGE Charles E. Stewart, Jr.

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- E, and the original filed papers numbered 1 thru 34, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	BRIEF DESCRIPTION
Oct. 12 1973	Plaintiffs memorandum of law in opposition to Defendants motion to dismiss complaint.
Nov. 15 1973	Notice of Motion for Class Action Determination
Nov. 29 1973	Defendants affidavit in opposition to motion for Class Action determination

IN TESTIMONY WHEREOF I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this _____ day of February, in the year of our Lord, One thousand nine hundred and seventy four, and of the Independence of the United States the 197th year.

Clerk of the Court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

NOTICE OF APPEAL

73 Civil 3113

C. E. S.

S I R S :

NOTICE IS HEREBY GIVEN that THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, and COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT ONE, and the members thereof hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the Hon. Charles E. Stewart entered herein on or about January 12, 1974 which declared invalid the May 1, 1973 election for membership to the school board of Community School District One and this appeal is taken from each and every part of said order as well as from the whole thereof.

Dated: New York, New York, February 11, 1974.

Yours,etc.,

ADRIAN P. BURKE
CORPORATION COUNSEL
Attorney for Appellants
Office and P. O. Address:
Municipal Building
New York, N. Y. 10007

By _____
CARL T. ANDERS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---------- X

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.
---------- X

NOTICE OF APPEAL

73 Civil 3983

SIRS:

PLEASE TAKE NOTICE that CAROLYN KOZLOWSKY, one of the defendants in the within action, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of this Court dated and entered the 11th day of January, 1974 declaring invalid the election of school board members of New York City Community School Board District 1 held on May 1, 1973 and that the positions on said school board are vacant, ordering a special election to be held for membership on the school board for said New York City Community School Board District 1, and ordering that pending such election, the Chancellor of the Board of Education of the City of New York exercise the statutory and adminstrative powers of the school board of New York City Community School Board District 1.

Dated: January 29, 1974

JOSEPH FROST, ESQ.
Attorney for Defendant,
CAROLYN KOZLOWSKY
32 Broadway
New York, N.Y. 10004
(212) DI 4-1555

TO: ADRIAN P. BURKE, ESQ.
Corporation Counsel
Municipal Building
New York, N.Y. 10007

GILBERT, SEGALL AND YOUNG, ESQS.
Attorneys for Plaintiff
405 Park Avenue
New York, N.Y. 10022

Exhibit "2"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

COALITION FOR EDUCATION IN DISTRICT ONE, BERTRAM BECK, PEDRO CORDERO, FRANK SUAREZ, JANE TAM, ERIC SNYDER, LYLE BROWN, GEORGINA HOGGARD, HENRY RAMOS, RAMONA CALDERON, FELICITA CLAUDIO, AMELIA OPIO, GLORIA ORTIZ, BERNARDO RODRIGUEZ, GLORIA RODRIGUEZ, DONATO VELEZ RIVERA, PETRA SANTIAGO, JUANITA DOMINGUEZ, NATIVIDAD TORRES, MYRNA RIVERA, RAMON PELIER, NG SUET FONG, PARD CHAN, WILLA KRAMER, MIRIAM GONZALEZ, CATHERINE CARLOTTI, HAN DEE CHANG, for themselves and all others similarly situated,

Plaintiffs,

- against -

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK: GUMERSINDO MARTINEZ, ALICE SACHS, ELRICH A. EASTMAN, HERBERT J. FEUER, CHARLES AVARELLO, ELIZABETH CASSIDY, ANTHONY SADOWSKI, JOSEPH PREVITE, LILIAN PRADO, SALVATORE SCLAFONI, individually and in their official capacity as members of the Board of Elections of the City of New York; THE NEW YORK COUNTY DEMOCRATIC COMMITTEE, THE NEW YORK COUNTY REPUBLICAN COMMITTEE, THE BRONX COUNTY DEMOCRATIC COMMITTEE, THE BRONX COUNTY REPUBLICAN COMMITTEE, THE KINGS COUNTY DEMOCRATIC COMMITTEE, THE KINGS COUNTY REPUBLICAN COMMITTEE, THE QUEENS COUNTY DEMOCRATIC COMMITTEE, THE QUEENS COUNTY REPUBLICAN COMMITTEE, THE RICHMOND COUNTY DEMOCRATIC COMMITTEE, THE RICHMOND COUNTY REPUBLICAN COMMITTEE; FRANK ROSETTI, New York County Democratic Committee Chairman; VINCENT S. ALBANO, JR., New York County Republican Committee Chairman; PATRICK J. CUNNINGHAM, Bronx County Democratic Committee Chairman; JOHN D. CALANDRA, Bronx County Republican Committee Chairman; MEADE ESPOSITO, Kings County Democratic Committee Chairman; GEORGE CLARK, Kings County Republican Committee Chairman; MATTHEW TROY, Queens County Democratic Committee Chairman; MELVIN KLEIN, Queens County Republican Committee Chairman; JAMES SMITH, Richmond County Democratic Committee Chairman; PHILIP J. FITZPATRICK, Richmond County Republican Committee Chairman; THE BOARD OF EDUCATION OF THE CITY OF NEW YORK; SEYMOUR P. LACHMAN, individually and in his official capacity as President of the Board of Education of the City of New York, JOSEPH MONSERRAT, ISAIAH E. ROBINSON, JR., MURRAY BERGTRAUM, and JAMES REGAN, individually and in their official capacity as members of the Board of Education of the City of New York; COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT ONE; DONALD BROWN, JEROME GOODMAN, CAROLYN KOZLOWSKY, SAUL MILDWORM, RICHARD LEE PRICE, and ADOLPH ROHER, individually and in their official capacity as members of the Community School Board of School District One; and ANN GREEN,

Defendants.

- X

CIVIL ACTION

NO. 73-3983

Judge Stewart

SUMMONS

FILED
JUL 1 1973
CLERK'S OFFICE
U.S. DISTRICT COURT
S.D. OF N.Y.

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon FREDRICK E. SHERMAN, plaintiffs' attorney, whose address is 405 Park Avenue, New York, New York 10022, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Burghardt
Clerk of Court.

E. A. Beehan
Deputy Clerk.

Dated: New York, New York
September 13, 18, 1973

[Seal of Court]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

COALITION FOR EDUCATION IN DISTRICT ONE, BERTRAM BECK, PEDRO CORDERO, FRANK SUAREZ, JANE TAM, ERIC SNYDER, LYLE BROWN, GEORGINA HOGGARD, HENRY RAMOS, RAMONA CALDERON, FELICITA CLAUDIO, AMELIA OPIO, GLORIA ORTIZ, BERNARDO RODRIGUEZ, GLORIA RODRIGUEZ, DONATO VELEZ RIVERA, PETRA SANTIAGO, JUANITA DOMINGUEZ, NATIVIDAD TORRES, MYRNA RIVERA, RAMON PELIER, NG SUET FONG, PARD CHAN, WILLA KRAMER, MIRIAM GONZALEZ, CATHERINE CARLOTTI, HAN DEE CHANG, for themselves and all others similarly situated,

Plaintiffs,

- against -

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK; GUMERSINDO MARTINEZ, ALICE SACHS, ELRICH A. EASTMAN, HERBERT J. FEUER, CHARLES AVARELLO, ELIZABETH CASSIDY, ANTHONY SADOWSKI, JOSEPH PREVITE, LILIAN PRADO, SALVATORE SCLAFONI, individually and in their official capacity as members of the Board of Elections of the City of New York; THE NEW YORK COUNTY DEMOCRATIC COMMITTEE, THE NEW YORK COUNTY REPUBLICAN COMMITTEE, THE BRONX COUNTY DEMOCRATIC COMMITTEE, THE BRONX COUNTY REPUBLICAN COMMITTEE, THE KINGS COUNTY DEMOCRATIC COMMITTEE, THE KINGS COUNTY REPUBLICAN COMMITTEE, THE QUEENS COUNTY DEMOCRATIC COMMITTEE, THE QUEENS COUNTY REPUBLICAN COMMITTEE, THE RICHMOND COUNTY DEMOCRATIC COMMITTEE, THE RICHMOND COUNTY REPUBLICAN COMMITTEE; FRANK ROSETTI, New York County Democratic Committee Chairman; VINCENT S. ALBANO, JR., New York County Republican Committee Chairman; PATRICK J. CUNNINGHAM, Bronx County Democratic Committee Chairman; JOHN D. CALANDRA, Bronx County Republican Committee Chairman; MEADE ESPOSITO, Kings County Democratic Committee Chairman; GEORGE CLARK, Kings County Republican Committee Chairman; MATTHEW TROY, Queens County Democratic Committee Chairman; MELVIN KLEIN, Queens County Republican Committee Chairman; JAMES SMITH, Richmond County Democratic Committee Chairman; PHILIP J. FITZPATRICK, Richmond County Republican Committee Chairman; THE BOARD OF EDUCATION OF THE CITY OF NEW YORK; SEYMOUR P. LACHMAN, individually and in his official capacity as President of the Board of Education of the City of New York, JOSEPH MONSERRAT, ISAIAH E. ROBINSON, JR., MURRAY BERGTRAUM, and JAMES REGAN, individually and in their official capacity as members of the Board of Education of the City of New York; COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT ONE; DONALD BROWN, JEROME GOODMAN, CAROLYN KOZLOWSKY, SAUL MILDWORM, RICHARD LEE PRICE, and ADOLPH ROHER, individually and in their official capacity as members of the Community School Board of School District One; and ANN GREEN,

Defendants.

- X

CIVIL ACTION

NO. 75 3983

Judge Stewart

COMPLAINT

CLASS ACTION

Nature of Action

1. This is an action to redress the deprivation under color of State statutes, ordinances, customs, and usuages of rights, privileges and immunities secured by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by the laws of the United States contained in 42 U.S.C. §§ 1971, 1973, 1983, 1988.

Jurisdiction

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331(a), 1343(3) and (4), 2201 and 2202. There exists a federal question and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00).

CLASS ACTION

Allegations

3. (a) Plaintiffs bring this action in their own behalf and on behalf of all others similarly situated, pursuant to Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure.

(b) The class represented by plaintiffs is composed of all Spanish surnamed (Hispanic), Black and Chinese voters in the City of New York.

(c) The class is so numerous as to make joinder of all members and an estimate of the number of members in the class impracticable and unfeasible.

(d) The named plaintiffs are fully representative members of the class and will fairly and adequately protect

class members' interests. They include, as more fully set forth below, Hispanic, Black and Chinese voters and candidates for office in the City of New York who have had their rights guaranteed by the First, Fourteenth and Fifteenth Amendments to the United States Constitution violated in the manner alleged herein which has resulted in:

(i) their being denied their right to vote;

(ii) having their votes unconstitutionally diluted;

(iii) being denied due process and equal protection of the law; and

(iv) being denied their right to effectively associate for political purposes.

(e) The questions of fact common to the class include:

(i) Whether the method by which the Board of Elections and its members have exercised their statutory responsibility of appointing election inspectors has the purpose and/or effect of selecting persons who will use their powers to deny Hispanic, Black and Chinese residents of the City of New York their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes.

(ii) Whether the Democratic and Republican County Committees and the Democratic and Republican County Chairmen exercise their statutory responsibilities of

preparing lists of election inspectors so as to deny Hispanic, Black and Chinese residents of the City of New York of their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes.

(iii) Whether the failure of the Board of Elections and its members to establish procedures whereby complaints of abuses by election inspectors and other election officials may be received, investigated and acted upon has the purpose and/or effect of denying Hispanic, Black and Chinese residents of the City of New York their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes.

(iv) Whether the actions and inactions of the election inspectors, the New York County Democratic and Republican Committees, and the New York County Democratic and Republican County Chairmen, Board of Elections and its members and Board of Education and its members in reference to the Community School Board Election of May 1, 1973 in Community School District One resulted in the denial of the right of Hispanic, Black and Chinese voters:

(a) to vote;

(b) not to have their votes diluted;

(c) to effectively associate for political purposes; and

(d) whether the members of the Community School Board elected at that election were successful as a result of said actions and inactions.

(f) The questions of law common to the class include:

(i) Whether the method and practice of appointing election inspectors described herein is unlawful in that it has the purpose and effect of denying Hispanic, Black and Chinese voters their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes, which are protected by the Constitution.

(ii) Whether the failure of the Board of Elections and its members to establish a procedure for receiving, investigating and acting upon complaints of abuses by election inspectors and other election officials is unlawful in that it has the purpose and/or effect of denying Hispanic, Black and Chinese voters of their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes, which are protected by the Constitution.

(iii) Whether the actions and inactions of the Board of Elections and its members and the Board of Education and its members in reference to the Community School Board election of May 1, 1973 in Community

School District One as described herein were unlawful in that they denied Hispanic, Black and Chinese voters their rights:

(a) to vote;

(b) not to have their votes diluted; and

(c) to effectively associate for political purposes, which are protected by the Constitution.

(iv) The nature of appropriate injunctive and affirmative relief from the unlawful practices and their effects alleged herein.

Plaintiffs

4. Plaintiff Coalition for Education in District One (hereinafter "Coalition") is an unincorporated association of parents, teachers and community residents whose aim is to improve the educational opportunities of the children attending the public schools in Community School District One.* In furtherance of that aim, prior to the school board election of May 1, 1973, the Coalition screened candidates, endorsed a slate of candidates, prepared and distributed literature urging support for its slate and otherwise expended money for the purpose of encouraging voters to support its slate of candidates.

5. Plaintiffs Bertram Beck, Pedro Cordero, Frank Suarez, Jane Tam and Eric Snyder, who are all citizens of the United States and residents of the State of New York, City of New York, County of

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* Community School District One is one of the thirty-two (32) community school districts located in New York City. See New York Slate Education Law Article 52-A.

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New York and Community School District One, were the candidates for re-election to the Community School Board in District One on the Coalition slate who were defeated as a result of the unconstitutional practices, procedures and standards alleged herein.

6. Plaintiffs Lyle Brown, Georgina Hoggard and Henry Ramos, who are citizens of the United States and residents of the State of New York, City of New York, County of New York and Community School District One were the candidates for re-election to the Community School Board in District One on the Coalition slate who were re-elected but whose authority as school board members has been substantially and adversely affected because:

(a) the other members of the Coalition's slate were defeated as a result of the unconstitutional practices, procedures and standards alleged herein; and

(b) there exists a widespread belief among residents of Community School District One that the Community School Board members were elected in an illegal and unconstitutional manner.

7. Plaintiffs Ramona Calderon, Felicita Claudio, Amelia Opio, Gloria Ortiz, Bernardo Rodriguez, Gloria Rodriguez, Donato Velez Rivera, Petra Santiago, Juanita Dominguez, Natividad Torres, and Myrna Rivera, are Puerto Rican citizens of the United States and residents of the State of New York, the City of New York, the County of New York, and Community School District One who were eligible to vote in the Community School Board Election of May 1, 1973 but were denied their right to vote because of their race or national origin.

8. Plaintiff Ramon Pelier is of Cuban national origin, a citizen of the United States and resident of the State of New York, the City of New York, the County of New York and Community School District One who was eligible to vote in the Community School Board Election on May 1, 1973 as a parent voter but was denied his right to vote because of his race or national origin.

9. Plaintiff Ng Suet Fong and Pard Chan are both Chinese citizens of the United States and residents of the State of New York, City of New York, County of New York and Community School District One who were eligible to vote in the School Board Election of May 1, 1973 but were denied their right to vote because of their race or national origin.

10. Plaintiff Willa Kramer is a Black citizen of the United States and a resident of the State of New York, City of New York, County of New York and Community School District One who was eligible to vote in the Community School Board Election of May 1, 1973 but was denied her right to vote because of her race.

11. Plaintiff Miriam Gonzalez is a Puerto Rican citizen of the United States and a resident of the State of New York, City of New York, County of New York and Community School District One who voted in the Community School Board Election of May 1, 1973, but had her vote unconstitutionally diluted by the practices, procedures and standards alleged herein.

12. Plaintiff Catherine Carlotti is a Black citizen of the United States and a resident of the State of New York, City of New York, County of New York and Community School District One who voted in the Community School Board Election of May 1, 1973, but had her vote unconstitutionally diluted by the practices, procedures and standards alleged herein.

13. Plaintiff Han Dee Chang is a Chinese citizen of the United States and a resident of the State of New York, City of New York, County of New York and Community School District One who voted in the Community School Board Election of May 1, 1973, but had her vote unconstitutionally diluted by the practices, procedures and standards alleged herein.

Defendants

14. Defendant Board of Elections of the City of New York has the statutory responsibility for supervising and administering elections in the City of New York, including Community School Board elections and appointing poll inspectors and other election officers to serve in each election district in the City of New York.

15. Defendants Gumersindo Martinez, Alice Sachs, Elrich A. Eastman, Herbert J. Feuer, Charles Avarello, Elizabeth Cassidy, Anthony Sadowski, Joseph Previte, Lilian Prado, and Salvatore Solafoni, who are sued individually and in their official capacity as members of the New York City Board of Elections, are responsible for the administration of all elections in the City of New York, including community school board elections, and appointing poll inspectors and other election officers for these elections.

16. Defendants Democratic Committees and Republican Committees are the political organs of the two major political parties in the several counties of the City of New York. They have, by statute, the authority and duty to file with the Board lists of persons "duly qualified to serve as election officers" who are members of their respective parties.

17. Defendant Frank Rosetti is the New York County Democratic Committee Chairman; defendant Patrick J. Cunningham is the Bronx County Democratic Committee Chairman; defendant Matthew Troy is the Queens County Democratic Committee Chairman; defendant Meade Esposito is the Kings County Democratic Committee Chairman; defendant James Smith is the Richmond County Democratic Committee Chairman; defendant Vincent S. Albano, Jr. is the New York County Republican Committee Chairman; defendant John Calandra is the Bronx County Republican Committee Chairman; defendant Melvin Klein is the Queens County Republican Committee Chairman; defendant George Clark is the Kings County Republican Committee Chairman; and defendant Phillip J. Fitzpatrick is the Richmond County Republican Committee Chairman.

18. Defendant County Chairmen have, by statute, the authority and duty to authenticate and file, or direct the authentication and filing, on behalf of their respective County Committees, of the lists of prospective election officers referred to in Paragraph 16.

19. Defendant Board of Education of the City of New York shares responsibility for the administration of community school board elections.

20. Defendants Seymour P. Lachman, President, Joseph Monserrat, Isaiah E. Robinson, Jr., Murray Bergtraum, and James Regan are sued individually and in their official capacity as members of the Board of Education of the City of New York who share responsibility for the administration of the community school board elections.

21. Defendant Community School Board of School District One has the responsibility of administering the public schools located in Community School District One and is presently composed of members who were elected in the Community School Board Election of May 1, 1973, as a result of the unconstitutional and systematic procedures, practices and standards alleged herein.

22. Defendants Donald Brown, Jerome Goodman, Carolyn Kozlowsky, Saul Mildworm, Richard Lee Price, and Adolph Roher who are sued individually and in their official capacity as members of the Community School Board of School District One, were elected to the School Board as a result of the unconstitutional and systematic procedures, practices and standards alleged herein.

23. Defendant Ann Green, served as a poll inspector during the Community School Board Election of May 1, 1973, where, upon information and belief, she used her position to deny Black, Hispanic and Chinese voters their right to vote because of their race and/or national origin.

24. Defendant Ann Green is sued individually and as the representative of a class composed of poll inspectors in the City of New York who have engaged in, threatened to engage in, encouraged, condoned and/or permitted the actions and the pattern and practice of conduct more fully set forth in Count I below.

COUNT I

Election Inspectors

25. The Election Inspectors perform a crucial function in the conduct of elections. Pursuant to the Election Law of the State

of New York, they are primarily responsible for the effective functioning of the polling places to which they are assigned, and for the "on-the-spot" implementation and vindication of the rights of the eligible voters in their Election Districts.

26. Pursuant to the Election Law of the State of New York, the Election Inspectors perform a variety of official functions at their respective polling places. Among these numerous functions are:

(a) Providing assistance in voting to illiterate, infirm, disabled or blind voters;

(b) Ascertaining the name, party registration and address of voters;

(c) Administering various oaths to voters in a variety of situations to determine the qualifications and eligibility of voter applicants; and

(d) Challenging voters in cases of suspected irregularities, and questioning of voters with regard to qualifications.

27. Pursuant to the Election Law of the State of New York, Election Inspectors have the sole authority to discuss challenges to the qualifications of a person desiring to vote. The inspectors determine whether that person is duly registered and qualified to vote.

28. In addition to their express statutory functions the Election Inspectors must cope with the near-infinite variety of problems which arise at their respective polling places. Among these functions are:

(a) Directing voters who attempt to vote at an incorrect location to the appropriate polling place; and

(b) In cases of disqualification, advising the voter of the specific reason why a determination was made that the voter could not vote, and directing those voters to an appropriate tourt in the event that a court order is required as a prerequisite to voting.

29. For each Election District in the City of New York there are, by statute, four Election Inspectors appointed by defendant Board of Elections for a period of one year. These election inspectors serve at every general, special or other election, including primary and community school board elections.

30. Pursuant to statute, the defendant Board of Elections selects and appoints Election Inspectors from a list of persons submitted to the Board by the County Chairmen of the two political parties that received the highest and second highest vote for Governor in the preceding general election.

31. The Election Inspectors who serve in elections in the City of New York are chosen by defendant Board of Elections from lists submitted by the defendant County Committee Chairmen of the Republican and Democratic Parties.

32. The legal framework for the appointment of election inspectors is used by the defendant County Chairmen with the knowledge and consent of defendants Board of Elections and its members, to control who will or will not be permitted to exercise his or her right to vote.

33. Defendants Board of Elections and its members have allowed the actual control over who is appointed as election inspectors to pass to the hands of the defendant County Chairmen and

their subordinates. The defendant County Chairmen and their designees select the persons who will be election inspectors in their areas and forward these names to the County Chairman who put them on the list described in Paragraph 27 supra. This list contains only as many names as there are vacancies and the Board of Elections appoints the people named without any investigation.

34. Election Inspectors are chosen on the basis of their allegiance to the party officials arranging their appointment with the understanding that they will perform their duties as these officials desire. If the election inspector does not perform as expected he will be removed from the office immediately.*

35. Election Inspectors have a background of partisan political activity and are expected to and do in fact remain active political workers for their party leaders after they are appointed election inspectors. Their position is a political patronage post and in return for the salary they receive the election inspectors are required to engage in electioneering and other political activity on behalf of the political leaders who arrange their appointment and to carry out the political goals of these leaders. When the political leaders have no strong perference as to how the election inspectors should use their powers the extensive ongoing political activity of the inspectors insure that the inspectors will not be neutral in elections, but will have strongly felt desires as to the outcome of the election and will exercise their powers accordingly.

36. The broad discretion conferred on election inspectors by New York State Law is systematically used by them to deny the vote to eligible persons or to permit ineligible persons to vote

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* See, New York State Election Law § 45.

based on the way in which the election inspectors expect them to cast their ballot. The decision as to how a person is likely to vote is based on a variety of factors including the person's race, nationality, age, apparent wealth, party registration, and previous political activity. However, the factors most often relied upon are race and national origin since these are most readily apparent and often correlate significantly with the manner in which the person will vote.

37. The election inspectors have engaged in a pattern and practice of denying Black, Hispanic and Chinese voters in the City of New York their right to vote because of their race and/or national origin thereby denying them due process and equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution, the right to vote as guaranteed by the Fifteenth Amendment, and violating their right to associate freely for political purposes guaranteed by the First Amendment.

38. The above-mentioned illegal actions, patterns, and practices of conduct have occurred in numerous and serious incidents affecting plaintiffs and the members of their class. Incidents directly affecting the plaintiffs in the May 1, 1973 Community School Board Election in Community School District One, which are representative of the city-wide problem, have included, but are not limited to the following:

(a) Election Inspectors required voters in predominantly Black, Hispanic and Chinese election districts to furnish identification containing their signatures before they could vote. No such identification was required in any of the predominantly white voter areas of District One. This additional requirement of identification intimidated, harrassed

and actually deprived Black, Hispanic and Chinese voters of their lawful right to vote.

(b) Election Inspectors allowed white voters to vote without court orders when their names were found to be missing from the voter lists, however, they did not permit Black, Hispanic and/or Chinese voters to vote without court orders when their names did not appear on the lists.

(c) Election Inspectors failed to inform Black, Hispanic and Chinese voters of their right to obtain court orders for voting and they interfered with poll watchers who attempted to inform minority voters of the procedure for obtaining court orders for voting. However, when white voters were challenged and a court order was required before they could vote they were informed of their right to obtain court orders and how to obtain them.

(d) Election Inspectors refused to permit registered Black, Hispanic and Chinese parent voters to vote at the school at which they had registered while white voters were not turned away from their polling places.

(e) Election Inspectors instructed Black, Hispanic and Chinese voters to sign their ballots, which invalidated them, while such advice was not given to white voters.

(f) Election Inspectors failed to inform Black, Hispanic and Chinese voters of the proper procedures for voting, or wilfully instructed them to mark their choices with an "x" rather than the required numbers, which invalidated the ballots of these voters. White voters were not treated in this manner.

(g) Election Inspectors wilfully refused to allow interpreters to fulfill their functions at the polls, which

deprived Spanish and Chinese speaking voters of needed assistance in violation of an order of this Court dated April 20, 1973, in Lopez v. Dinkins, 73 Civ. 695 S.D.N.Y.

(h) Election Inspectors refused to allow registered Hispanics to vote claiming that they could not find their names on the list. This did not happen to white voters.

(i) Election Inspectors distributed UFT slate campaign literature at the polls. The actions of election inspectors described in this Paragraph 38 in addition to having the purpose and effect of denying minority voters their right to vote and diluting the votes of those minority members who were successful in voting, also had the purpose and effect of defeating candidates on the coalition slate.

COUNT II

Board of Elections and Board of Education

39. Plaintiffs repeat and reallege Paragraphs 1 through 38 as if each and every such paragraph were more fully alleged herein.

40. Defendants Board of Elections and its members and defendants Board of Education and its members who are jointly responsible for the administration of the Community School Board Election know of the violations of constitutional rights alleged in Count I.

41. Although defendants Board of Elections and its members have the power and duty to prevent the actions set forth in Count I and the pattern and practices of abuse reflected thereby, they have failed and refused to prevent those wrongs by:

(a) Creating an atmosphere of official support for such abuse;

(b) Failing to establish and inform citizens and residents of the City of a reasonably accessible means of initiating complaints regarding abuses;

(c) Failing to conduct adequate and proper investigations of complaints of abuses and failing to notify the complainants of results of any investigations;

(d) Failing to hold formal hearings to consider complaints of abuses;

(e) Failing to institute appropriate disciplinary proceedings against election inspectors who have engaged in such abuses;

(f) Failing to establish and carry out programs for the proper training and supervision of election inspectors in order to prevent such abuses;

(g) Otherwise failing to adopt, promulgate, and carry out policies, guidelines, and procedures, necessary to prevent such abuses and to rectify the injuries resulting therefrom.

The aforesaid practice of inaction by the said defendants has had the effect of causing, encouraging, supporting and condoning the pattern and practice of illegal and unconstitutional conduct perpetuated by their agents, employees, and subordinates, the election inspectors.

42. Defendants Board of Elections and its members have not made a determined and systematic effort to eliminate the continuing pattern and practice of abuses by election inspectors directed against the plaintiffs and members of their clases in any concrete, formal, meaningful or lasting manner.

43. Defendants Board of Elections and its members have acted and failed and refused to act in the respects alleged above intentionally and/or by neglect.

COUNT III

Board of Elections - Community School District One

Background

44. Plaintiffs repeat and reallege Paragraphs 1 through 43 as if each and every such paragraph were more fully alleged herein.

45. In response to complaints from the minority communities within the City of New York that the public school system was failing to properly perform its duty of educating their children, the 1969 Session of the New York State Legislature passed a school decentralization law aimed at giving the various communities within the City control over their schools.

46. At the present time there exist thirty-two (32) Community School Boards within the City of New York. Two categories of persons are eligible to vote for the members of these boards:

(1) persons registered to vote in all New York elections ("regular voters"); and

(2) parents of children attending public elementary or junior high schools ("parent voters").

By virtue of the parent voter category, non-citizen parents are entitled to vote in school board elections. In addition, parents who are regular voters in election districts outside of the school district where their children attend school may vote in the community school board election if they register as parent voters.

47. From its inception the decentralization of the New York City School System has been marked by a bitter struggle between minority parents and the predominantly white and middle class United Federation of Teachers ("UFT"), the union that represents public school teachers in New York City. This conflict, which has had the effect of polarizing the races in the City of New York, has at times resulted in violence and was the cause of a 36-day teachers strike during the 1968-69 school year.

48. One tactic of the UFT in its struggle with minority parents is active participation in Community School Board Elections. These elections have been marked by charges and counter-charges of racism, an increase in the polarization of the races, and, all too often, in violence.

49. Simultaneous with its involvement in Community School Board Elections, the UFT has emerged as a major force in the general politics of the City and State of New York.

50. From its creation Community School District One, which has a student population that is approximately ninety-three percent (93%) Hispanic, Black and Chinese, has been a battle ground for minority group parents and UFT supporters.

51. Prior to the May 1, 1973 School Board Election, plaintiffs and other members of the class they represent informed defendant Board of Elections and defendant Board of Education of their fear that the Community School Board Election would not be conducted in a manner that would insure that all eligible Black, Hispanic and Chinese voters, both parent and regular, would be registered and afforded the opportunity to exercise their right to vote. After a series of meetings with representatives of defendant

Board of Elections and defendant Board of Education, minority residents of Community School District One, including several plaintiffs, along with minority residents of other community school districts in New York City, attempted to change certain procedures that were to be followed for the May 1, 1973 election. Their efforts included but were not limited to the following:

(a) Spanish and Chinese speaking voters and candidates for school board from District One and five other school districts filed suit in this Court to obtain language assistance for the school board election. In a series of orders issued by Judge Stewart, defendant Board of Elections was ordered to provide Spanish and Chinese language-nominating petitions, translators for registration, translators at the polls on election day and instruction on the ballot in Spanish as well as in English. See Lopez v. Dinkins, 73 Civ. 695 S.D.N.Y., orders signed 2/16/73, 3/15/73, and 3/21/73;

(b) Candidates and voters from eight (8) community school districts, including some of the plaintiffs, filed suit in state court praying that defendant Board of Elections be required to utilize the regular registration or buff cards of prospective voters at the May 1, 1973 election. On April 27, 1973, the New York State Court of Appeals reversed a lower court decision and ordered that the buff cards be used at the May 1, 1973 Community School Board Election. Raimundi v. Board of Elections, 342 N.Y.S. 2d 730 rev'd. ____N.Y.____ (April 27, 1973);*

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* However, the New York State legislature passed a special law on April 30, 1973 that permitted the use of computer lists rather than buff cards at the May 1, 1973 election. McKinney's Session Laws, New York Chapter 236, p. 316.

(c) After defendant Board of Education refused to release lists of parent names which could be used by volunteer registrars and candidates in the registration of parent voters, plaintiffs and other members of their class appealed to the State Education Commission to obtain their release. This appeal was denied.

52. The community school board elections were held on May 1, 1973, over the protest of plaintiffs and other members of their class. The atmosphere surrounding the election in Community School District One was marred by extreme racial conflict and hostility. A predominantly white slate of candidates supported by the UFT ran against the slate chosen by plaintiff Coalition. The atmosphere of racial conflict was heightened by campaign literature aimed against plaintiff Coalition's slate of candidates that played on white middle-class fears of a take-over of schools and other public institutions by racial minorities.

53. Since the May 1, 1973 election, plaintiffs have repeatedly tried to redress the deprivation of voting rights alleged herein. These efforts have included but have not been limited to the following:

(a) On May 3, 1973, even before the ballots were tallied, plaintiff Georgina Hoggard attempted to meet with David Dinkins, then President of the Board of Elections, to discuss the election. Mr. Dinkins was "unavailable."

(b) On May 8, more than 300 community residents attended public hearings on the elections in District One, which was also attended by a number of organizations including the Committee for Democratic Election Law (CODEL). On the basis of the evidence presented there, CODEL began to conduct an investigation into the conduct of the election.

(c) The CODEL investigation was hampered by the fact that needed records of registration could not be examined at the defendant Board of Elections offices because defendant Board of Elections and its members were administering the two primary elections held in New York City during the month of June. The required records were not made available until the latter part of July, 1973.

(d) On July 19, the new school board in District One met in public for the first time. The meeting ended in a confrontation and was halted by the police.

54. Defendants Board of Elections and its members acting individually and in concert with others under color of law have engaged in, condoned and/or permitted the actions, pattern and practices in Community School District One described below directed against plaintiffs and their class, resulting in numerous and continuing violations of their rights, privileges, and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments of the Consittution of the United States and the laws of the United States and the State of New York. The activities directly affecting the plaintiffs in Community School District One have included, but are not limited to the following:

(a) Failing to comply with the mandate of Lopez v. Dinkins, supra to supply Spanish language assistance through multi-language forms and through interpreters thereby disenfranchising a substantial number of Hispanic voters;

(b) Making numerous changes in election districts or polling sites in predominantly Black, Hispanic and Chinese areas which affected in excess of 3,500 voters while making no changes in election districts or polling sites in predominantly white areas;

(c) Failing to inform Black, Hispanic and Chinese registered voters of changes in their polling sites or election districts, thereby disenfranchising an unknown number;

(d) Failing to furnish maps of polling places at registration sites which had the effect of disenfranchising substantial numbers of new voters who were voting for the first time, the overwhelming percentage of whom were Black, Hispanic and Chinese;

(e) Locating polling places in predominantly white middle-income housing projects while failing to locate polling places in predominantly Black, Hispanic and Chinese low income housing projects, thereby making it necessary for Black, Hispanic and Chinese voters to travel longer and often more circuitous routes to their polling places than white voters;

(f) Failing to inform newly registered voters, the majority of whom were Black, Puerto Rican or Chinese, of the location of their polling sites;

(g) Utilizing computer lists of regular voters which contained numerous errors and omissions, of Hispanic names;

(h) Failing to deliver needed supplies to the polling sites which resulted in the failure of certain polling sites in the Black, Hispanic and Chinese voter areas to open on time, while polling sites in the white neighborhoods did open on time;

(i) Failing to supply maps of the District for use by election inspectors in assisting voters which had the effect of disenfranchising citizens voting for the first time, the overwhelming majority of whom were Black, Hispanic and Chinese;

(j) Failing to process the registration forms ("buff cards") of numerous parents who registered especially as parent voters for the May 1, 1973 Community School Board Elections in District One; and

(k) Failing to adequately process the registrations of new regular voters. The names of new voters were not incorporated into the alphabetized computer list of voters used to identify eligible voters, but instead were compiled on special supplemental lists which in numerous instances were not consulted by elections inspectors or were not made available at the polling sites. Failure to adequately process these names affected the ability of 1,000 new voters, the majority of whom were Black, Puerto Rican and Chinese, to vote.

The actions of defendant Board of Elections described in this Paragraph 54 in addition to having the purpose and effect of denying minority voters their right to vote and diluting the votes of these minority members who were successful in voting, also had the effect of defeating candidates on the coalition slate.

COUNT IV

Community School Board of School District One

55. Plaintiffs repeat and reallege Paragraphs 1 through 54 as if such paragraphs were more fully alleged herein.

56. Defendants Community School Board of School District One and its members have taken office pursuant to an election which had the purpose and effect of violating plaintiffs' rights, privileges and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments to the United States Constitution and the laws of the United States and the State of New York.

57. Since the election of May 1, 1973, defendants Community School Board and its members have threatened and/or taken action that will harm plaintiffs and the class they represent. Such

action has included but is not limited to an attempt to move the district office from a school that is located in the center of the district which is an area inhabited by minority group members, to a school less centrally located in a predominantly white middle-class section of the district and attempts to discharge administrative staff appointed by the predecessor Community School Board.

IRREPARABLE INJURY

58. Unless the defendants and each of them are enjoined from the actions and in actions set forth in Counts I, II, III and IV and the pattern and practice of violation of constitutionally protected rights reflected thereby, and a new election for the members of the Community School Board for School District One is held pursuant to procedures that will protect the rights of plaintiffs and the class they represent, the plaintiffs and members of their class will continue to suffer great and irreparable injury and grave infringement of their legal and constitutional rights.

59. Plaintiffs and members of their class have no adequate remedies at law. An award of damages to plaintiffs is not adequate to protect the plaintiffs and members of their class from continuing violation of their constitutional rights and the chilling effect it has on the exercise of these rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray as follows:

1. That a declaratory judgment issue holding, (1) the procedures, patterns and practices described in Count I; (2) the inaction described in Count II; (3) the actions and inaction described in Count III; and (4) the action described in Count IV to be illegal and unconstitutional.

2. That a permanent injunction issue:

(a) requiring that defendants Board of Elections and its members and Board of Education and its members hold a special community school board election in Community School District One;

(b) enjoining defendant Community School Board One and its members from engaging in any acts or activities that will have the effect of frustrating the ability of the board elected at the special community school board election to carry out its mandate to administer the schools in District One;

(c) requiring that there be an additional period of parent voter registration prior to the special election;

(d) requiring that all voters be notified of their polling places prior to the special election;

(e) requiring that the language assistance ordered in Lopez v. Dinkins, supra, be provided for the special election and for the pre-election registration; and

(f) enjoining all election inspectors appointed for the special election from denying any citizen his or her right to vote because of race and/or national origin.

3. That pending a final judgment in this matter that this Court issue a preliminary injunction enjoining defendants Community School Board for District One and its members from engaging in any acts or activities that will have the effect of frustrating the

ability of the board elected at the special Community School Board Election from carrying out its mandate to administer the schools in District One.

4. That a permanent injunction issue requiring that defendant Board of Elections develop and submit to this Court for approval within ninety (90) days after the date of its Order a detailed procedure for the appointment of election inspectors which will insure that the persons selected will not, because of extensive political involvement and activity or personal prejudice, use the powers of their office in the manner described in Count I, supra.

5. That a permanent injunction be issued requiring defendant Board of Elections to establish and promulgate detailed rules and regulations prohibiting the conduct alleged in Counts I and III and other like abuses of the electoral process by election inspectors and other election officers and prescribing appropriate penalties for violation of such rules and regulations.

6. That a permanent injunction issue requiring defendant Board of Elections to develop and present to this Court within thirty (30) days after the date of its Order a detailed plan for the establishment and operation of an effective program for the receipt, investigation, and disposition of citizens' complaints of electoral abuses.

7. That the Court grant such other relief as it shall deem necessary and appropriate.

Dated: New York, New York
September 13, 1973

By _____

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COMM. SUPERINTENDENT
DISTRICT 1M

Index No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

- against -

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

SUMMONS AND
COMPLAINT
CLASS ACTION

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UNITED STATES DISTRICT COURT:
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, BELKIS DIAZ, PEDRO CORDERO, FRANK SUAREZ, JANE TAM, ERIC SNYDER, LYLE BROWN, GEORGINA BOSGARD, HENRY RAMOS, RAMONA CALDERON, et al.,

73 Civ. 3983

NOTICE OF MOTION TO DISMISS COMPLAINT

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al

Upon the annexed affidavit of Irwin L. Herzog, Assistant Corporation Counsel, defendants Board of Elections of the City of New York, Board of Education of the City of New York and Community School Board of School District One, will move this Court in Room 2602, United States Court House, Foley Square, New York, New York on the 11th day of October, 1973, at 10:00 A.M. for an order:

1. Dismissing the action under Rule 12(b)(1) as to the aforementioned defendants on the ground that the complaint fails to state a claim against them upon which relief can be granted.

2. Dismissing the complaint against all of the defendants on the ground that the complaint fails to present a substantial federal question.

3. Dismissing the complaint against the aforementioned defendants on the ground that the identical legal issues raised by plaintiff's complaint have already been litigated before this Court.

Yours, etc.,

NORMAN REDLICH
Corporation Counsel

by [signature]
Assistant Corporation Counsel
Attorney for Defendants
Board of Elections, Board of Education and Community School Board of School District One
Office and P.O. Address:
Municipal Building
New York, N.Y.10007

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TO:

FREDERICK E. SHERMAN
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JACK GREENBERG
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, BERNARD BECK, PEDRO CORDERO, FRANK SUAREZ, JANE TAM, ERIC SNYDER, LYLE BROWN, GEORGINA HOGGARD, HENRY RAMOS, RAMONA CALDERON, et al.,

73 Civ. 3983

AFFIDAVIT

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

IRWIN L. HERZOG, being duly sworn, deposes and says:

1. I am an assistant in the office of NORMAN REDLICH, Corporation Counsel, attorney for defendants, New York City Board of Elections, New York City Board of Education and Community School Board of School District One and am fully familiar with the facts and circumstances hereinafter set forth.

2. This affidavit is submitted in support of defendants' motion to dismiss the complaint.

3. Plaintiffs having moved this Court for an order:

(1) declaring the actions of the defendants in reference to the Community School Board Election of May 1, 1973 in Community School District One (hereinafter "District One") to be illegal and unconstitutional;

(2) requiring defendants Board of Elections and Board of Education to hold a special community school board election in "District One", requiring an additional period of parent voter registration prior to said special election, and requiring bi-lingual assistance be provided for said special election.

(3) enjoining defendant Community School Board of School District One from "engaging in any acts or activities that will have the effect of frustrating the ability of the Board elected at the special community school board election

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to carry out its mandate to administer the schools in "District One";

(4) requiring that defendant Board of Elections submit to the Court a detailed procedure for the appointment of election inspectors and

(5) requiring defendant Board of Elections to establish rules and regulations prohibiting abuses of the electoral process by election inspectors and requiring defendant Board of Elections to develop and present to the Court a detailed plan for the receipt, investigation and disposition of citizen's complaints of electoral abuses.

4. In regard to the alleged illegality of the Community School Board Elections of May 1, 1973: The aforementioned city wide election was the subject of a similar suit, Lopez v. Dinkins, 73 Civ. 695 S.D.N.Y. In order to insure that the rights of Hispanics and Chinese parents in the May 1, 1973 School Board Elections be fully protected, this Court ordered:

(1) That all printed materials for said school board election be distributed in both Spanish and English in those school districts having at least 5% Hispanic students enrolled therin (Stipulation signed February 16, 1973);

(2) that Bi-lingual Registration Work Forms be made available in Chinese in all public schools in District One having a significant Chinese population (Defendant's Proposed Counter Order signed March 9, 1973);

(3) that the period of registration for said School Board Elections be extended for three days, that at least one person who is bilingual in both Spanish and English be present in each polling place within a Hispanic community to assist Spanish speaking voters, that defendant Board of Elections have printed and distributed bilingual instructions and that defendant Board of Elections advertise the election in the Spanish press and on Spanish speaking radio stations (Order signed March 15, 1973);

(4) that the defendant Board of Elections notify all candidates for said School Board Elections in Districts Nos. "1" and "2" that their biographical statements may appear in Chinese, in addition to English and/or Spanish (Order signed March 30, 1973).

5. It is apparent from the foregoing orders that the legal issues sought to be litigated by the plaintiffs in the present action have been previously decided in Lopez v. Dinkins, 73 Civ. 695 and the subsequent School Board election of May 1, 1973 has been carried out pursuant to the Orders of this Court.

6. If plaintiffs are alleging that said election was not carried out pursuant to this Court's orders, the proper relief is through contempt proceedings.

7. In regard to the procedure for the appointment of election inspectors: The Board of Elections has provided translators in all Spanish speaking districts during the Community School Board election of May 1, 1973. Election in-

spectors are appointed by the Board of Elections pursuant to the provisions of §40 of the New York State Election Law.

Section 40 of the Election Law, in relevant part, provides:

> "The board of elections shall, on or before the first day of September of each year, select and appoint election officers for each election district therein, and may fill any vacancy which may occur before the opening of the polls on election day.
>
> Each political party entitled to representation in any board of election may not later than the first day of July in each year, file with such board an original list of persons, members of such party duly qualified to serve as election officers.*** All appointments shall be made from the original list of those named therein are found qualified; if not so qualified, then from a supplemental list so filed." (emphasis added)

The Board of Elections directed each of the County Chairman to comply with the Federal mandate requiring bi-lingual interpreters and pursuant to that directive bi-lingual interpreters were assigned to the various polling places in "District One" during the School Board elections.

8. In regard to rules and regulations prohibiting abuses of the electoral process: Section 69 of the New York State Executive Law confers upon the Attorney-General of the State of New York the powers and duties to investigate allegations of electoral abuses arising under the election law.

In addition to the powers conferred upon the Attorney-General, the New York City Board of Elections itself maintains a complaint book, for the purpose of entertaining citizens' complaints regarding electoral irregularities within the City of New York. All complaints are listed in this book and investigated by officials of the Board.

WHEREFORE, defendants respectfully request that plaintiffs' complaint be dismissed.

IRWIN L. HERZOG

Sworn to before me this
4 day of October 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

vs.

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

- -

CIVIL ACTION

No. 73-Civ. 3983

ORDER TO SHOW CAUSE

FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Upon the complaint previously filed herein and the affidavits of Judith Baumann, Georgina Hoggard, Catherine Carlotti, and William Carlotti, attached hereto it is ORDERED that the defendants show cause at a motion term of this court to be heard in Room ~~2601~~ 129, United States Court House, Foley Square, New York, New York on the ~~16~~ 15 day of October, 1973, at ~~2:00~~ 10 o'clock in the ~~afternoon~~ fore, or as soon thereafter as counsel can be heard, why an order should not be made enjoining defendants Board of Education of the City of New York and its members and Community School Board of School District One and its members preliminarily before trial:

1. From abolishing any positions or job classifications in Community School District One that were in existence during the 1972-1973 school year; and

2. From taking any other irreversible action in Community School District One. For the purpose of this order irreversible action is any act which a community school board elected at a

special election ordered by this court would be unable to reverse during the 1973-1974 school year. Such action would include but not be limited to the dismissing of any personnel, the moving of the district office, and the abolition of existing bilingual programs; and it is further

ORDERED that pending the hearing and determination of this motion, that defendants Community School Board of School District One and its members are temporarily restrained from abolishing the positions of Director of Personnel and Director of Parent and Community Information (Principal School Neighborhood Worker) or from taking any other action the purpose or effect of which is to terminate the employment of Charles Scardino, Faith Wright, or Harvey Silver; and it is further

ORDERED that a security deposit is not required for the issuance of this order; and it is further

ORDERED that personal service of a copy of this order, and the supporting papers upon which the same was granted, on defendants Board of Education of the City of New York, Community School Board of School District One, The Board of Elections of the City of New York, The New York County Democratic Committee, The New York County Republican Committee, The Bronx County Democratic Committee, The Bronx County Republican Committee, The Kings County Democratic Committee, The Kings County Republican Committee, The Queens County Democratic Committee, The Queens County Republican Committee, The Richmond County Democratic Committee, The Richmond County Republican Committee, and Ann Green on or before October 11, at 5:00 PM 1973, shall be sufficient

service of this order.

Dated: New York, New York
October 9, 1973
Issued at Noon

Charles E Stewart
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,	:	
Plaintiffs,	:	
vs.	:	CIVIL ACTION
THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,	:	No. 73-Civ. 3983
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JUDITH BAUMANN, being duly sworn, deposes and says:

1. For the last year and one-half I have been employed as the National Secretary of the Committee for Democratic Election Laws (CODEL). CODEL is an unincorporated association established to promote reform of the electoral process so as to make it open and responsive to all people. CODEL has representatives in more than 35 cities with its headquarters in New York City. As part of my responsibilities as National Secretary I have studied extensively the election laws of each of the fifty states, and have testified as an expert on election law in federal court in Pennsylvania and the District of Columbia. I make this affidavit in support of plaintiffs' motion for a temporary restraining order and preliminary injunction.

2. As part of its program CODEL has for several months conducted, under my direction, a study of and engaged in efforts to reform the process of electing community school boards in the City of New York.

3. From its inception the decentralized public school system in New York City, with its popularly elected community school boards, has been a battle ground between the predominantly white United Federation of Teachers (UFT) and minority parents for "control" of the public schools.

4. Community School District One is the smallest district in pupil population in the City and has the highest concentration of Spanish surnamed students. Its 17,090 pupils are 73% Spanish surnamed, 15% black, 5% Oriental and 7% others.

5. The school board in office prior to the May 1, 1973 election proved to be very responsive to and representative of the minority residents and children of the district. They made special efforts to directly involve parents in the day-to-day operation of their schools. This effort included the hiring of a Director of Parent and Community Information to serve as a liaison between the schools and the parents.

6. Many months before the school board election of May 1, 1973, it became evident to all persons familiar with community school district one that the UFT had singled out that district as a special target for its election activities. Two issues were paramount: UFT opposition to the concept of "community control," with maximum involvement of minority parents in the operation of the schools, advocated by the local school board then in power; and UFT opposition to Luis Fuentes, a Puerto Rican appointed by the school board then in power, who had been charged with racism and anti-semitism, but exonerated.

7. In February, representatives of the district one community expressed to me their fears that the community school board election would not be conducted in such a way as to insure full participation of minority parents in the election. As

evidence of their view, they told me that the Board of Elections had refused to issue bilingual nominating petitions or to guarantee any other language assistance for potential Spanish and Chinese speaking voters. In their view this would severely curtail participation of the parents of 78% of the school population. They also said the Board was refusing to allow adequate registration opportunities for parents, the overwhelming majority were black and Spanish surnamed and that the UFT would use its well-known political power and resources to work to limit minority parent participation in district one elections.

8. I became active in working to bring about the fullest participation in the election. To determine the extent of the registration problem, I supervised a survey among nearly 1,000 low-income, predominantly Black, Puerto Rican and Dominican parents and found only 14% were currently registered to vote. Two of the four areas sampled were in district one. A lawsuit to achieve mail registration was unsuccessful, but through negotiations community groups did achieve a volunteer registration process and a limited extension of the local registration period. More than 4,000 persons were believed to have registered in district one.

9. Other legal actions, outlined on page 21 of the complaint, achieved language assistance guarantees and resulted in an opinion of the State Court of Appeals that the regular buff cards of voters must be utilized at the polls.

10. Following the victory on the buff card issue, the UFT openly lobbied for passage of special legislation to allow use of computer lists to identify voters. This legislation was passed on the eve of the election, and thus the usual guarantee of Article II, Section 7 of the New York State Constitution calling

for identification of voters through their signatures was not followed on May 1.

11. The community school board election of May 1, 1973, was conducted in district one over the protest of minority residents and groups who complained of the lack of buff cards, special courts for election day and other procedural protections, the absence of which increased the possibility of election fraud and that Black, Spanish surnamed and other minority voters would be denied their right to vote.

12. As expected, the turnout in district one far exceeded the turnout elsewhere in the city. For that reason, and because of the atmosphere of racial conflict surrounding the election, the discriminatory denial of the right to vote of Black, Spanish surnamed and other minority voters reached substantial proportions.

13. I personally visited two of the polling sites in district one, P.S. 63 and JHS 71, on May 1. In addition, I supervised the research and wrote an extensive report on the elections, with a focus on district one. In the course of that investigation I took statements from approximately 250 persons in the district who were poll watchers or voters or official observers representing civic organizations. I also examined computer lists, checked the validity of registrations of voters who said they were turned away, and investigated the location of and changes of polling places in district one. The results of my investigation have led me to conclude that the kinds of irregularities on May 1 had the effect of disenfranchising or diluting the votes of members of racial minorities in that

community, especially those Black, Puerto Rican and Chinese parents who were voting for the first time.

14. I compared a white voter area of district one (Grand Street) to a similarly-sized Black and Puerto Rican area. Some examples of the discriminatory impact of the conduct of the elections were:

a. While there were no changes to the polling places in the white area, all but one of the election districts in the Black and Puerto Rican area studied were changed in some way. The Board of Elections failed to notify old voters of these changes, which made it impossible for voters to find their proper polling places. This contributed to general confusion at the polls in the Black and Puerto Rican neighborhoods and was the cause of so many voters being sent from poll to poll in search of their names. Unknown numbers of minority voters gave up in frustration and despair.

b. The Board of Elections failed to provide maps at the polling places so that voters could find their proper polling site. This caused no real problem in the white voter area. Very few white voters were newly registered prior to this election, and since their polling places had not been changed, the old voters knew where to go. In contrast, the 4,000 predominantly Black and Puerto Rican new voters and the old voters in Black and Puerto Rican areas of district one whose polling places were changed were forced to rely on information supplied by election inspectors, often incomplete or incorrect, as to their proper polling places. They were sent from poll to poll

and were not informed of their right to obtain a court order to vote.

c. The location of the polling places favored white voters. In the white area, five of eight polling places were located in middle income housing projects. In spite of a large number of low income housing projects in the Black and Puerto Rican neighborhood, not a single polling site was located in a low income project. In fact, one polling site in the minority neighborhood was located in a middle income project.

d. The computer lists as prepared and utilized disenfranchised a disproportionate number of Blacks and Puerto Ricans. The names of new voters were not listed in the alphabetized master lists of voters, but instead were placed in front of the master lists of a particular E.D. Election inspectors were found to ignore the lists of new voters, which disenfranchised these voters. In addition, I found that Hispanic names were often misspelled or omitted from the lists.

e. In reviewing the computer lists, I found that voters in the white area were permitted to sign without court orders even if their names did not appear, while in no instance was a Hispanic voter treated similarly.

f. Many parent registrations were not properly processed and since the overwhelming majority of parent voters were Black and Puerto Rican, it had the effect of discriminating against these racial groups. For example, all the JHS 71 parent names were missing from the polling place. All these parents were disenfranchised as a result. Only 75 of the 1,183 pupils

in JHS 71 are white, and thus it is obvious that it was Black, Puerto Rican or Chinese parents who were disenfranchised by the failure to have such cards at the polls.

g. At a number of polling places in the Black and Puerto Rican neighborhoods, voters were required to furnish identification before they could vote. This served to disenfranchise Black and Puerto Rican voters who were not aware of any such requirement and had no identification with them. (Needless to say, this identification is not required by law.) In addition, it caused long lines to form at the polls, which further served to discourage voters from waiting in long lines to vote. And Black and Puerto Rican voters were forced to submit their personal records, such as bank books, to inspectors for scrutiny before they could get their right to vote. Identification was not required in the white neighborhoods.

h. There were countless reports of campaigning by election inspectors at the polls for the UFT slate. I personally observed UFT slate palm cards on a table before an election inspector at P.S. 63. White voters testified to me that they were given UFT palm cards with their ballots, that they were told to vote for a slate of nine (the community slate had only seven candidates on the ballot), and that they found UFT palm cards inside the voting area when they went to vote.

i. Poll watchers for the community slate testified that election inspectors would not permit them to check computer lists for names, and that they were otherwise restrained from serving as poll watchers. On the contrary, poll watchers for the UFT slate were permitted to check the computer lists.

j. Interpreters testified they could not fulfill their function as interpreters because the inspectors feared they might be campaigning and restrained them from approaching voters. The effect was to disenfranchise an unknown number of Spanish-speaking voters.

15. Since July, when the new board took power, the minority parents in district one have vociferously objected to the way the present board was elected. At public meetings they have repeatedly stressed that in their view this present board is illegally elected and not representative of district one.

16. Since its election the present board has attempted to eliminate the participation of minority residents in the administration and operation of the schools in district one. These efforts have included, but are not limited to, the following: (a) an attempt to move, at considerable expense, the district office from the center of the district, which is a Black and Puerto Rican neighborhood, to a white neighborhood on the fringes of the district; and (b) the establishment of a "purge list" of employees of the district, who are known to be advocates of increased minority resident participation in the selection of principals and other personnel, who are to be removed from their positions. In addition, the new board has threatened to curtail, if not eliminate, the bilingual programs in the schools which are of great importance to a district with a high percentage of Spanish-speaking and Chinese students.

17. On Tuesday, October 2, 1973, the board commenced procedures aimed at abolishing the positions of Director of

Personnel and Director of Parent and Community Information (Principal School Neighborhood worker). The two individuals who hold these positions are generally known to be advocates of minority parent involvement in the schools of district one. In addition, their names appeared on the "purge list" compiled by the board which listed approximately nineteen (19) employees of school district one who were to be removed because of their support for the involvement of minority residents in the schools. It is clear that the school board does not intend to eliminate the duties performed by the two employees, but to transfer them to individuals whose position on minority involvement in the schools is more compatible with the majority of the board. Therefore, the abolition of these two positions, which will have the effect of removing the two "offensive" individuals, is the first step in the present school board's plan to fundamentally change the character of the personnel and the method of operation of community school district one and thereby severely limits, if not totally eliminates, minority resident participation in the operation and administration of the schools which have a 93% minority enrollment.

18. The attempt to abolish the two positions is scheduled to be finalized at a community school board meeting on Tuesday, October 9, 1973. If this action, plus any further attempt by the present school board to take irrevocable action to change the character or method of operation of community school district one, is not enjoined by this Court pending a final determination on the merits, the effect will be that the plaintiffs and the

class they represent will be irreparably harmed because the irrevocable acts taken by the present board will bind its successor and limit the new board's ability to carry out the will of the voters who elected it. Therefore, any vote cast at a new election ordered by this Court will be diminished in consequence, importance and power as compared with a vote cast in the May 1, 1973 election that was conducted in a racially discriminatory manner, since the persons elected will not have the freedom of action enjoyed by the present community school board.

WHEREFORE, I respectfully pray that plaintiffs' motion for a temporary restraining order and preliminary injunction be granted.

JUDITH BAUMANN

Sworn before me this
9th day of October, 1973.

NOTARY PUBLIC

LOUIS SCHWARTZ
Notary Public, State of New York
Qualified in Nassau County
No. 30-3554700
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,	:	
Plaintiffs,	:	
vs.	:	CIVIL ACTION
THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,	:	No. 73-Civ. 3983
Defendants.	:	

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

GEORGINA HOGGARD, being duly sworn, deposes and says:

1. That I am a Puerto Rican resident of Community School District One and a plaintiff in this action. I make this affidavit in support of plaintiffs' motion for a temporary restraining order and preliminary injunction.

2. That I served as chairman of the Community School Board for School District One prior to the election of May 1, 1973.

3. That I was a candidate for re-election to the Community School Board on the slate supported by the Coalition for Education in District One for the May 1, 1973 Community School Board election.

4. That I am one of the three members of my slate who were re-elected on May 1, 1973. I am presently serving on the Community School Board and I have attended all of the meetings of the School Board since the election.

5. I am also the mother of two daughters who are presently attending schools under the control of the Community School Board for School District One and am very concerned about the developments in the district since the May 1, 1973 election.

6. At a meeting held on August 14, 1973, Mr. Adolph Roher, present chairman of the Community School Board who was elected on the UFT-supported slate, after consultation with the other board members elected on that slate who constitute a majority of the board, produced a list of approximately nineteen (19) persons who were to be discharged as District Office employees of District One. All of the individuals named were identified as being supporters of the participation of minority residents in the operation and administration of the schools in the district. The overwhelming majority of the persons on the list were Black, Spanish-surnamed and Chinese.

7. On August 21, 1973, the Community School Board held an executive session. At that meeting, Mr. Roher submitted a proposed tax-levy budget which eliminated the positions of all of the persons named on the "purge list" plus additional individuals not previously named. In addition, the budget would require the elimination of a minimum of 35 community workers (school aides), a majority of whom are Puerto Rican and Black.

8. On September 6, 1973, a public meeting of the Community School Board was held. At that meeting, the majority board members presented a resolution to discharge three of the individuals named on the purge list. However, since there had been no charges brought against those individuals and no

evaluation by their supervisors, the board did not act on this resolution. However, the board in executive session on Tuesday, October 2, 1973, included in the agenda for the public meeting to be held on October 9, 1973, resolutions calling for the elimination of the jobs of two of the three people named on September 6, 1973, through a modification of the budget and instituting a procedure aimed at eliminating the third. By choosing to attack job titles of the individuals, the majority of the board is attempting to camouflage its real purpose, namely the commencement of the purge of employees who support the participation of minority residents in school administration and operation.

9. The attempt to eliminate the positions scheduled for Tuesday, October 9, 1973, is not an isolated incident. Since its election the present board has consistently attempted to eliminate the participation of minority residents in the administration and operation of the schools in District One. In addition to the purge list, the board's effort has included an attempt to move, at considerable expense, the district office from the center of the district, which is a Black and Puerto Rican neighborhood, to a white neighborhood on the fringes of the district. Further, the new board has threatened to curtail, if not eliminate, the bilingual programs in the schools which are of great importance to a district with a high percentage of Spanish-speaking and Chinese students. Therefore, the action planned for Tuesday, October 9, 1973, is but the first step in the present school board's plan to fundamentally change the character of the personnel and the method of operation of

Community School District One and thereby severely limits, if not totally eliminates, minority resident participation in the operation and administration of the schools which have a 93% minority enrollment. If this action, plus any further attempt by the present school board to take irrevocable action to change the character or method of operation of Community School District One, is not enjoined by this Court pending a final determination on the merits, the effect will be that the plaintiffs and the class they represent will be irreparably harmed because the irrevocable acts taken by the present board will bind its successor and limit the new board's ability to carry out the will of the voters who elected it. Therefore, any vote cast at a new election ordered by this Court will be diminished in consequence, importance and power as compared with a vote cast in the May 1, 1973 election that was conducted in a racially discriminatory manner, since the persons elected will not have the freedom of action enjoyed by the present community school board.

WHEREFORE, I respectfully pray that plaintiffs' motion for a temporary restraining order and preliminary injunction be granted.

Georgina Hoggard

GEORGINA HOGGARD

Sworn before me this
2nd day of October, 1973.

Judith Baumann

NOTARY PUBLIC

JUDITH BAUMANN
Notary Public, State of New York
No. 31-0[illegible]
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

COALITION FOR EDUCATION IN DISTRICT ONE, et al :

Plaintiffs, :

v. : CIVIL ACTION No.73 Civ.3983

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al., :

Defendants :

- -

AFFIDAVIT

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

CATHERINE CARLOTTI, being duly sworn deposes and says:

1. I am a black resident of Community School District One and a plaintiff in this action. I reside at 3 Haven Plaza, New York, New York, and was a resident at the same address on May 1, 1973, the date of the Community School Board elections in District One. I make this affidavit in support of plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction.

2. On May 1, 1973, I served as a poll watcher pursuant to Section 223 of the election law, for Frank Suarez, a candidate for election to the Community School Board who is also a plaintiff in this action, at Public School number 34, a school which was used as a polling-place for the elections. I was at the polling place from 8:00 A.M. until 9:00 P.M.

3. The student population of P.S. 34 is overwhelmingly Puerto Rican and Black and the overwhelming majority of the voters who cameto the polling place were either Puerto Rican or Black.

4. The election inspectors and other election officials consistently harassed the Black and Puerto Rican voters who

attempted to vote at P.S. 34.

5. The election inspectors required voters to produce proof of identity in order to be able to vote. This caused enormous confusion and very long lines at the voting tables. Many voters who were found on the voting list had to return home in order to obtain the identification required by the inspectors when they actually possessed such identification but had not brought it with them to the polls. Others who did not possess sufficient proof of identity were simply unable to vote. Some white voters were not required to show any identification.

6. When Spanish surnamed voters tried to vote there were often mis-spellings of their names on the computer print-out list which was used to name voters. Even when these voters had identification which showed that they lived at the address on the computer list and when their names were almost identical to the list except for the spelling mistakes on the lists, the voting inspectors would not allow them to vote. This happened only to voters with Spanish surnames.

7. The voting inspectors would not allow Black or Puerto Rican poll watchers, or any who supported the plaintiff candidates to examine the computer print-out lists in order to help find the names of voters. They allowed the white poll watchers provided by the United Federation of Teachers to examine these lists at their pleasure.

8. On numerous occasions the election inspectors would claim not to be able to find the names of Puerto Rican or Black voters after a cursory examination of the voter lists. When I was able, despite the objections of the inspectors, to examine the lists, I was often able to find the names of these voters on the lists.

9. Black and Puerto Rican voters were told on occasion to mark their ballots with an "X" even though the ballots were to be marked with numbers one through nine to indicate preference and any ballot marked only with "X's" was automatically considered invalid.

10. During the course of the voting on May 1, 1973, the ballots and voting equipment for the 32nd Election District was moved from P.S. 34 to another polling site. One man who had returned to his residence to get an identification, came back to the polling place to vote, only to find out that the voter rolls from his election district, E.D. 32, had been moved to some other site. To my knowledge the polling sites of no predominantly white election districts were moved on election day in such a manner.

11. In all of their dealings during the course of the day on May 1, 1973, the election officials and inspectors were courteous and friendly to the very small number of white voters who did come to vote at the polling site I observed. They were generally abrasive, officious, and in every way unhelpful to the overwhelming majority of the voters at the polling place who were Black and Puerto Rican.

12. For various reasons and in various ways, the election inspectors turned away an unknown, but decidedly large number of Puerto Rican and Black voters who were eligible to vote.

Catherine L Carlotti
CATHERINE CARLOTTI

Sworn to before me this
7th day of October, 1973

Judith Bauman

JUDITH BAUMAN
Notary Public, State of New York
No. 31-0195598
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

COALITION FOR EDUCATION IN DISTRICT ONE, et al. :

Plaintiffs, :

v. : CIVIL ACTION No.73 Civ.3983

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al. :

Defendants. :

- -

AFFIDAVIT

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

WILLIAM CARLOTTI, being duly sworn, deposes and says:

1. I am a resident of 3 Haven Plaza, New York, New York, in Community School District One. I was a resident at the same site on the date of the Community School Board Elections in District One, May 1, 1973. I make this affidavit in support of plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction.

2. On May 1, 1973, I had served as a poll watcher, pursuant to Section 223 of the Election Laws, on behalf of Pedro Cordero, a candidate for election to the Community School Board and a plaintiff in this action. During the course of the day, I had occasion to serve at three different polling sites, Public School 23, Public School 64 and a middle income housing project on Grand Street.

3. In the morning, at 8:00 A.M. I reported to P.S. 34, a polling site in an overwhelmingly Black and Puerto Rican neighborhood. At that polling place the voters, almost all of whom were either Black or Puerto Rican, were required to produce proof

-63-

of their identity. This caused many of them to have to leave the polling site to get identification. It also enormously slowed down the voting process and caused much confusion and long lines of voters.

4. I protested the requirement of special proof of identification to the election inspector and was referred to the Assistant Attorney General at the polling site. The Assistant Attorney General not only refused to correct the situation, but ordered me from the polling site and threatened me with arrest unless I leave.

5. I then went to P.S. 64, a voting place which was also in a Black and Puerto Rican neighborhood. There the election inspectors in several instances failed to check all of the several alphabetical voter lists which together contained the names of the registered voters. Inspectors would tell voters that they could not vote on the basis of looking at only one of the lists and failed to check the other lists for the voter's election district.

6. I then went to a voting site located in a housing project on Grand Street. This polling place was almost entirely white with very few minority voters. There, no proof of identity was required, voting proceeded smoothly, there was no delay in any way comparable to the long lines of voters at P.S. 34 and P.S. 64.

7. At P.S. 34 and P.S. 64, the overwhelmingly minority polling site the inspectors and other elections personnel seemed hostile to the voters and erected barriers preventing them from exercising their rights. At Grand Street, the overwhelmingly white polling site, the inspectors were friendly, seemed to know most of the voters, facilitated their voting and placed no barriers in the

way of any of the voters.

WILLIAM CARLOTTI

Sworn to before me this

[illegible]day of October, 1973

JUDITH BARNHILL
Notary Public, State of New York
No. 31-0190278
Qualified in New York County
[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al., Plaintiffs, vs. THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al., Defendants.	CIVIL ACTION No. 73-Civ. 3983 (CES) TEMPORARY RESTRAINING ORDER

Upon the pleadings and papers previously filed herein, the proceedings had to date, and the affidavit of Georgina Hoggard, sworn to October 17, 1973, it is

ORDERED That, pending the determination of plaintiffs' motion for a preliminary injunction previously filed herein, defendants Community School Board of District One and its members are temporarily restrained from:

1. Implementing their purported suspension of Luis Fuentes as Community Superintendent of Schools;

2. Implementing their ~~purported~~ recission of the personnel selection procedures and termination procedures established for Community School District One prior to July 1, 1973;

3. ~~Implementing the purported~~ Any removal of the District's offices from JHS 71 to PS 137;

4. Eliminating any positions or job classifications in Community School District One that were in existence during the 1972-73 school year; and

5. Taking any other action to terminate any personnel or change any procedures or programs established for Community School District One prior to July 1, 1973; and it is further

ORDERED that a security deposit is not required for the issuance of this order; and it is further

ORDERED that service of a copy of this order. and the supporting papers upon which the same was granted on counsel in this action for defendant Community School Board of School District One, shall be sufficient service of this order.

DATED: New York, New York
October ~~18~~, 1973
~~Issued at~~

by 5 p.m., October 19, 1973,

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

vs.

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.

Defendents.

AFFIDAVIT

CIVIL ACTION
No. 73-Civ. 3983 (CES)

GEORGINA HOGGARD, being duly sworn, deposes and says:

1. I am a member of the Community School Board for School District One and I make this affidavit in support of plaintiffs' motion for an expanded Temporary Restraining Order.

2. I was present at a meeting of the Community School Board on Tuesday evening, October 16, 1973, at which the following events occurred:

a) A majority of the Board voted to suspend Community School Superintendent Luis Fuentes without pay pending a hearing on disciplinary charges simultaneously lodged against him.

b) A majority of the Board voted to rescind the District's "Personnel Selection Procedures" and "Termination Procedures." A copy of the Board's Personnel Selection and Termination Procedures is attached hereto and made a part hereof as Exhibit "A."

3. The actions of the Board described in paragraph 2 were presented to the Board in an addendum to the agenda circulated while the meeting was in progress and neither I, nor the other two minority members of the Board, had notice prior to the meeting that such actions would be proposed. A copy of the

"Addendum to Agenda of Public Meeting of October 16, 1973" is attached hereto and made a part hereof as Exhibit "B."

4. On information and belief the Board majority also voted to move the District's offices from their present location at JHS 71 in a Black and Puerto Rican neighborhood to PS 137 in a White neighborhood. The source of my information and belief is a story published in the New York Post on Wednesday, October 17, 1973.

5. By its action, the Community School Board for School District One has continued and escalated its policy of dismantling the existing programs, procedures and personnel complement of District One, which I described in greater detail in my affidavit of October 8, 1973, submitted to this Court in support of the previously issued Temporary Restraining Order dated October 9, 1973.

6. A broader restraining order is now required to insure that the status quo will be maintained pending the determination of the pending motion for a preliminary injunction, since the Community School Board for School District One has made it clear that it intends to use every means available to it to carry out its program of irreversibly changing the policies, procedures, programs and personnel in the District prior to this Court's determination of the legality of the May 1, 1973 elections.

WHEREFORE, I respectfully pray that the plaintiffs' application for a Temporary Restraining Order be granted.

Georgina Hoggard

GEORGINA HOGGARD

Sworn to (affirmed) before me this
17th day of October, 1973.

Judith Baumann

JUDITH BAUMANN
Notary Public, State of New York
No. 31-0193293
Qualified in New York County
Commission Expires March 30, 1975

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EXHIBIT "A"

BOARD OF EDUCATION OF THE CITY OF NEW YORK
Community School Board, District 1
600 EAST SIXTH STREET, NEW YORK, N. Y. 10009
TELEPHONE 673-5184
228-4200-1-2

LUIS FUENTES
COMMUNITY SUPERINTENDENT

GEORGINA HOGGARD
CHAIRMAN, COMMUNITY SCHOOL BOARD

MEMBERS OF THE BOARD:

BERTRAM BECK
LYLE BROWN
PEDRO CORDERO
ANTOINETTE D. MAURO
HENRY RAMOS
FRANK SUAREZ
REV. ERIC SNYDER
JANE TAM

ASSIGNMENT OF ACTING SUPERVISORY PERSONNEL

The following procedures shall govern the way principals, assistant principals, coordinators, directors and all other supervisory personnel are to be seelcted in our district.

ELIGIBILITY

As approved at a public meeting on November 29, 1973, all candidates for acting supervisory positions must either (a) possess appropirate New York State Certification, or (b) meet all eligibility requirements forthe most recent appropriate supervisory examination, or (c) meet the above requirements except the requirement for administrative experience, which may be fulfilled by the candidates enrollment in an approved internship program at the time of appointment which shall within one year provide the remaining experience required.

PUBLIC NOTICE OF VACANCY

A minimum of 30 days public notice of the vacancy to be filled is required for the purpose of notifying all interested parties of the vacancy.

When a supervisory vacancy occurs, announcement will be made on the public agenda of the school board and in a flyer to be sent home to all parents in the particular school which is involved.

The notice of a vacancy will include eligibility requirements, salary, job description and a notice that further information may be secured from the District School Board Office.

POSTING OF VACANCIES

A notice of all vacancies shall be sent to the Central Board of Education Office of Personnel; and posted in the district office and in every school in the district in a conspicuous location where it can be seen by both staff and parents.

In addition every attempt shall be made to widely advertise all vacancies. Advertisements will be made through newspapers.

FILES OF ALL RESUMES

The Personnel Director will review all resumes to determine eligibility. After that, the Community School Board will receive the resume and keep an up-to-date file for all eligible applicants' resumes in its office. This file shall be open to all screening committee members. Copies of requested resumes will be duplicated for all members of the screening committee.

INVOLVEMENT OF PARENT ASSOCIATIONS AND COMMUNITY

A detailed procedure for the involvement of parents and community representatives in the selection of school principals and assistant principals was duly passed in public by the Community School Board on June 8, 1972 and amended July 19 and October 18, 1972. A full copy is attached.

This procedure shall be followed for the selection of all acting supervisory personnel in each school in District One. Each school's Screening Panel must first be approved by each school's parent association at a public meeting of that parent association; the composition of that screening panel must then be submitted to the Community School Board in writing where it will also have to be approved at a public meeting of the Community School Board.

Candidates for all supervisory positions in the District Office will be interviewed by a Screening Committee composed of representatives from President's Council and the Personnel Committee of the Community School Board as well as other community representatives as are appropriate. Such a screening Committee will be approved by the Community School Board at a public meeting. All other procedures outlined in this memo will be followed for district supervisory vacancies. The Community Superintendent of his staff representative will also sit on such a committee.

SCREENING COMMITTEE RECOMMENDATIONS

When a sufficient number of candidates apply for an acting supervisory position, interviews by the screening committee may be limited to the 15 considered best qualified according to all of the requirements stated for the position. Parent Associations and District Screening Committees must make at least three recommendations, in writing, to the Community Board who will interview these three candidates with the Superintendent and make the final selection at a public meeting.

EQUAL AND FAIR CONSIDERATION

The Community School Board and all designated screening committees shall act in accordance with all antidiscrimination and other applicable laws.

SELECTION CRITERIA

The following selection criteria were adopted at a public meeting of the Community School Board on November 29, 1972 at PS 15. These are meant to act as guidelines for each screening panel, which may adapt them to local and community needs. Selection Criteria of each screening committee must be approved at a public meeting of the Community Board and must be available in written form to all applicants for that position. In addition, job descriptions, elegibility requirements and other needed information shall be made available to each applicant upon request, prior to his intervie

SELECTION CRITERIA (Adopted by Community School Board #1, November 29, 1972)

1. Has a record of positive results in affecting student growth and achievement.

2. Shows empathy for children and youth.

3. Receives favorable recommendations by supervisors, peers and students.

4. Has had meaningful community involvement.

5. Presents evidence of ability to translate general community objectives into educational programs.

6. Has demonstrated supervisory ability in both school and non-school activities.

7. Shows receptivity to new concepts and ideas.

8. Performs positively in interviews and such other evaluative processes as may be used.

PERFORMANCE OBJECTIVES (Adopted by Community School Board #1, November29,1972)

All Supervisors in our district are expected to show evidence of effective performance in the following:

1. Leadership of staff.
2. Development of productive and harmonious student-staff relationships.
3. Involvement of parents and community in planning, implementing and evaluating educational programs.
4. Use of available non-school resources and institutions for educational purposes.
5. Provision of varied learning opportunities to meet the individual needs of students.
6. Motivation of staff

Personnel Procedures for Community School District #1

(As duly passed by the Community School Board on June 8, 1972, and amended July 19, 1972, and October 18, 1972.)

PRINCIPALS

1. The process of selecting a new principal shall begin when the Community Superintendent having notified the Community School Board that a position has become vacant or is due to become vacant, the Community School Board shall so notify the Parents Association of the school and instruct the Parents Association to begin to set up the Screening Committee.

2. Responsibility for setting up the Screening Committee, establishing selection criteria and a working timetable shall rest with the Executive Committee of the Parents Association, who shall perform these tasks in consultation with and subject to the approval of the full parent body of the school. Only parents shall participate in this process; teachers and other staff members who are not parents in the school shall participate in an advisory capacity on the Screening Committee only.

3. The P.A. or P.T.A. executive committee shall publicize the vacancy to all parents, and offer them the chance to volunteer for the Screening Committee. The P.A. executive committee shall be responsible for recommending membership for the Screening Committee, which must be made broadly representative of the school's parents; membership must be filed with and approved by the Community School Board, as well as approved by the full parent body of the school. The Screening Committee shall include not fewer than ten parents; two representatives elected by the G.O.'s in J.H.S.'s who shall be voting members; the CSB liaison member, serving ex officio; and two advisory (non-voting) representatives elected by the professional staff and paraprofessional staff respectively.

   The parents may also include a maximum of two advisory (non-voting) representatives of community organizations or interested community persons, if they so wish. At least 80% of the parent members must be parents not employed by the Board of Education.

3A. Prior to conducting interviews, the P.A. executive committee shall, in consultation with the Community Superintendent and the Board, develop criteria for the selection of the principal.

   The P.A. or P.T.A. shall involve the parents of all children in the school in this process, and criteria must be approved by a meeting of the full parent body.

4. The CSB liaison member shall attend all meetings of the executive committee and of the screening committee dealing with the vacancies and shall be responsible for assisting the parents to discharge their responsibilities.

5. The Community Superintendent shall be responsible for assisting the screening committee and shall, if requested by the Board, be present at interviews. Specifically he shall help the parents to develop effective advertising and recruitment procedures.

6. Only those candidates who are eligible may be interviewed.

7. The screening committee may wish to have final candidates appear before a special meeting of the School's parents and possibly a meeting of the school's staff, so that all concerned may have a chance to meet the finalists and offer their recommendations to the committee.

8. The screening committee shall recommend three candidates to the Community Superintendent for his review and recommendation to the Community School Board. The Superintendent shall transmit the committee's report with his recommendations to the Board. The committee shall include in its report full records of all meetings, and criteria selection.

*The term "principal" is used to apply to those certified for the post by either New York State certification or the New York City Board of Examiners.

9. The Community School Board shall make the final choice of principals for all schools. The interviewing committee, as well as parents of all children and all staff, shall be informed of the selection. Also, if the Board's selection differs from their recommendations, they shall receive an explanation of the considerations that governed the Board's decision.

ASSISTANT PRINCIPALS

10. The same procedure shall be followed to select and appoint Assistant Principals when such vacancies occur.

12. The Community Superintendent shall have the authority to recruit and appoint qualified personnel to his district office staff, subject to the review and approval of the Community School Board. Job descriptions and salaries for all such staff, plus source of funding, shall be published and available to the public.

TEACHERS

13. The Community Superintendent shall have the authority to recruit and appoint teachers for the district in consultation with the parent body of each school, and with the approval of the Community School Board.

14. The Presidents Council shall meet with the Community Superintendent and Community School Board so that they may help develop what criteria are used for evaluating teachers and administrative staff. These criteria shall be published and distributed in each school.

15. Names of all staff members being considered for tenure shall be published 120 days before the date they become eligible. The list of such staff for each school shall be sent home to all parents so they may offer any comments positive or negative, that should influence permanent appointment. Parents shall have advisory rating rights. Responsibility for granting tenure shall continue to rest in the Community Superintendent and the Community School Board.

16. In evaluating personnel, the principal shall consider the full record of the person being evaluated, including any valid and timely complaints as well as any special praise recorded by parents or community members. Such comments shall be passed on to and reveiwed by the Community Superintendent as well, before final decision is made.

17. Any procedures concerning tenure shall include published safeguards for the legal rights of both parents and professional staff and shall respect the contractual rights of the staff.

ROLE OF PARENT ASSOCIATION AND PARENT TEACHER ASSOCIATIONS

18. The Parent Association of each school shall be fully informed about, and shall be involved in, the selection of principals and supervisory personnel, curriculum, discipline, safety, food services, special and innovative programs, building renovations or replacement site selection, budgets, use of Federal, State and other special funds, achievement scores and all program evaluations.

19. Ultimate responsibility for making decisions on those matters delegated under the law to the Community School Board rests with the Community School Board.

GRIEVANCES

20. The suggested channels for resolving grievances related to the rights of Parents are first the Principals, then Community Superintendent, the Community School Board, the Chancellor, the City Board, the State Commissioner of Education and ultimately the courts.

BOARD OF EDUCATION OF THE CITY OF NEW YORK
Community School District 1
15 AVENUE B NEW YORK N.Y. 10009 TELEPHONE 228-4200-1

LUIS FUENTES
COMMUNITY SUPERINTENDENT

ANN MERSEREAU
Deputy Superintendent

PERSONNEL SELECTION PROCEDURES
DISTRICT ONE

drafted 12/18/72; revised 1/17/73; approved 3/28/73

1. SPECIAL PROGRAM AND DISTRICT OFFICE PERSONNEL PROCEDURES: a personnel screening procedure for selecting staff to the district office.

1. Coordinators and Directors are to accept applications and conduct initial screening for all vacancies in their programs.

2. At the same time, they are to announce all vacancies at least two weeks before filing them, together with qualifications, job descriptions, and salaries. (Post with local agencies; in newspapers; schools, District Office.)

3. They must submit to Director of Personnel more than one application for each positon. If only one application is submitted, there must be a written explanation.

4. The Director of Personnel and the Chairman of the Board's Personnel Committee will then schedule interviews. The Coordinator must check out all references before submitting names.

5. A list of all people who have applied for all jobs should be kept available.

6. The Coordinator of the program having applicants screened is expected to attend the personnel interview, along with the Director of Personnel.

7. At the end of each Personnel Committee meeting, a report will be prepared by the Director of Personnel, to be approved by the Chairman of the Personnel Committee. This report must be approved by a quorum of the board, either at the Personnel meeting or the next executive session. It should include precise information on who was hired, where placed, if job accepted and any changes made.

8. If School Board members have persons to be screened for any job, they should refer them first to the coordinator. However, if the coordinator does not recommend that person, the board member has a right to insist that that person be among those interviewed.

9. Programs with parent committees must allow for the initial screening to be conducted by the coordinator and parents before recommending to Community School Board their final selections.

10. PRIORITIES FOR HIRING NON PEDOGOGICAL EMPLOYEES
Employees should be wherever possible:
residents of this community
have children attending public schools in our district
of low income families (if not professionals)
bilingual or multilingual
enrolled in school to further their own education

TERMINATION PROCEDURES

A. Involuntary termination of service of any district employee shall be made in accordance with the following procedures:

1. No district employee shall be terminated without cause.

2. The Superintendent, upon consultation with the appropriate supervisor or supervisors, and in consultation with the appropriate parent body, (appropriate parent body will be defined as such: In the case of termination of an employee in a school - The P.A. or P.T.A. officers; In the case of termination of an employee on the District Office staff, in a Tax-Levy position - the Presidents Council; In the case of an employee on the District Office staff in a Non-Tax-Levy position- The parent groups most affected by the program) at his discretion, shall submit formal charges to the Community School Board

3. Whereupon the Community School Board, upon its descretion, may appoint a hearing examiner, who shall make findings and recommendations concerning the allegations contained in the Superintendent's charges. The findings and recommendations shall be submitted to the Community School Board and the Community Superintendent.

4. The Community School Board may adopt, reject, or modify the recommendations of the examiner.

B. Prior to excessing of any position in the District, there shall be consultation between the Community Superintendent and appropriate Parent Body, whose recommendations along with those of the Community Superintendent shall be submitted to the Community School Board.

EXHIBIT "B"

COMMUNITY SCHOOL BOARD
DISTRICT ONE
75 AVENUE B

ADDENDUM TO AGENDA OF PUBLIC MEETING OF OCTOBER 16, 1973

RESOLUTIONS:

I. Charges and Specifications having been presented to the Board alleging that Luis Fuentes has committed acts constituting insubordination, deceit, misapplication of District funds, neglect of duty, violation of his employment contract, conduct prejudicial to the good order of the District and other acts of misconduct in office, the Board directs that:

A. Copies of the charges and specifications be served on Luis Fuentes.

B. A hearing be duly held on notice to Luis Fuentes for the receipt of evidence in support of and in opposition to such charges.

C. The Board determine after such hearing whether any of such charges and specifications are sustained by the evidence and whether Luis Fuentes is guilty of any of such charges and specifications and if so, the penalty if any, to be imposed.

Pending the hearing and determination of the charges, Luis Fuentes is suspended from the position of Community Superintendent of District 1 forthwith without pay, and the Chancellor is requested to recommend candidates for appointment by the Board as interim Community Superintendent.

Explanation: The Community Superintendent is being afforded the opportunity of a hearing on notice with the right of counsel on these serious charges.

II. The Board retains Richard L. Aronstein, Esq. as its legal counsel in this matter.

Explanation: It is necessary for the Board to retain legal counsel in these matters.

ADDENDUM TO AGENDA OF PUBLIC MEETING OF OCTOBER 16, 1973

III. The Board rescinds the procedure entitled "Personnel Selection Procedures District One" purportedly approved on March 28, 1973, and the procedure entitled "Termination Procedures" which is undated.

Explanation: The Board is unable to verify the authenticity of the alleged Personnel Selection Procedures and Termination Procedures, and therefore rescinds them.

III. La Junta rescinde el procedimiento llamado "El Procedimiento de la Seleccion del Personal de Distrito Uno" que supuniemente fue aprobado el 28 de marzo de 1973, y el procedimiento llamado "Procedimientos de Terminacion" que es sin fecha.

Explication: La Junta no puede verificar la autenticidad de los alegados procedimientos ya nombrados en la resolucion y por eso los rescinde.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -X

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

CIVIL ACTION
3983/73

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - -X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

DORON GOPSTEIN, being duly sworn, deposes and says:

I am an assistant to NORMAN REDLICH, Corporation Counsel, attorney for defendants, and am familiar with the proceedings previously had herein.

Attached to this affidavit as Exhibits "A" through "K" are various documents referred to either specifically or generally by defendants at the hearing this morning (October 18, 1973) before the Court on plaintiffs' motion for an additional temporary restraining order.

Defendants respectfully submit these documents as part of the record presented to the Court on this motion.

/s/
DORON GOPSTEIN

Sworn to before me
on the 18th day of October, 1973

JOSEPH F. BRUNO
Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Commission Expires [illegible] 30, 1974

COMMUNITY SCHOOL BOARD OF SCHOOL DISTRICT ONE
75 Avenue B, New York, New York 10009

SEPTEMBER PUBLIC MEETING
October 9, 1973

TIME: 8:00 P.M.
PLACE: PS 19 - 185 First Avenue

AGENDA

1. OPEN AGENDA: Speakers limited to one hour. Maximum of 4 minutes per speaker. Those wishing to speak on the Open Agenda should call Lourdes Garcia at 673-5184 prior to noon on October 9, 1973.

2. CURRENT AGENDA SPEAKERS: Limited to one and half hours. Maximum of 4 minutes per person. Those wishing to speak should call Lourdes Garcia at 673-5184 prior to noon on October 9, 1973.

3. APPROVAL OF MINUTES OF THE PUBLIC MEETING OF SEPTEMBER 6, 1973.

4. REPORT OF COMMUNITY SUPERINTENDENT

5. NEW BUSINESS

A. Personnel Resolutions

1. The Community School Board abolishes the following positions in the District Office effective October 23, 1973:

   a) Director of Personnel
   b) Principal School Neighborhood Worker

   Explanation: The Board wishes to reorganize the District Office to enable it to better serve both the schools and the board. The board expects to allocate more money directly to the classroom.

2. The Community Superintendent is instructed to advertise to fill the position of Acting Supervisor, Health and Physical Education forthwith and in accordance with the provisions of Special Circular 30, 1972-73.

   Explanation: This action is required by Special Circular No. 142 1972-73 of the Board of Education.

3. The Community Superintendent is instructed to rescind the evaluation contract with Mr. Griffith.

   Explanation: The Superintendent was not authorized by the Community School Board to sign such a contract. The Board prefers to look into several such evaluations before making a decision.

4. The Community School Board rescinds all modifications to the bylaws.

   Explanation: The Board wishes to bring the bylaws to the same form as when originally issued so that all the bylaws will be in a single published document. Modifications will then be considered and those which are passed will be included in a new publication of the bylaws.

POLICY RESOLUTIONS

5 A. The Community School Board requests that the Central Board investigate the recent appointments to the position of acting principals at PS 188M to determine if the procedures of circular 30 have been violated.

Explanation: It appears that appointments were made prior to the expiration of the required advertising period.

5 B. COUNTER RESOLUTION TO POLICY RESOLUTION # 5A

The three Minority School Board members feel that the above resolution (5) is merely a charade to cover the intent of the majority members to fire these two community principals, who were properly screened by the parents of PS 188 and approved by the previous school board.

Explanation: This resolution is added to the agenda by the minority members of the board to afford the majority members (who introduced the original resolution 5 above) an opportunity to openly fire these principals, rather than through the pretense of an investigation by Central Board. We feel that this is the first attempt to fire all of the community screened principals.

6. No consultant shall be hired without written approval of the Community School Board.

Explanation: The Board wishes to be directly involved in retaining consultants.

7. The Community School Board approves of the action of the Community Superintendent in appointing Mr. Algernon Black as hearing officer in the case involving alleged acts of racism at J22

Explanation: Charges have been made against a parent of J22 that she had made anti-semitic statements. The parent has agreed that she will voluntarily participate in an open and fair hearing conducted by Mr. Algernon Black, Leader Emeritus of the Ethnical Culture Society, which will hear and determine these charges and counter-charges of racism brought by parents against certain school staff of J 22.

October 16, 1973

The Chairman
Community School Board District 1

The undersigned, a majority of the members of Community School Board District 1, request and consent that the annexed resolutions be placed on the agenda and acted upon at the Public Meeting of the School Board to be held on October 16, 1973.

COMMUNITY SCHOOL BOARD
DISTRICT ONE
75 AVENUE B

ADDENDUM TO AGENDA OF PUBLIC MEETING OF OCTOBER 16, 1973

RESOLUTIONS:

I. Charges and Specifications having been presented to the Board alleging that Luis Fuentes has committed acts constituting insubordination, deceit, misapplication of District funds, neglect of duty, violation of his employment contract, conduct prejudicial to the good order of the District and other acts of misconduct in office, the Board directs that:

A. Copies of the charges and specifications be served on Luis Fuentes.

B. A hearing be duly held on notice to Luis Fuentes for the receipt of evidence in support of and in opposition to such charges.

C. The Board determine after such hearing whether any of such chsrges and specifications are sustained by the evidence and whether Luis Fuentes is guilty of any of such charges and specifications and if so, the penalty if any, to be imposed.

Pending the hearing and determination of the charges, Luis Fuentes is suspended from the position of Community Superintendent of District 1 forthwith without pay, and the Chancellor is requested to recommend candidates for appointment by the Board as interim Community Superintendent.

Explanation: The Community Superintendent is being afforded the opportunity of a hearing on notice with the right of counsel on these serious charges.

II. The Board retains (Richard L. Aronstein) Esq. as its legal counsel in this matter.

Explanation: It is necessary for the Board to retain legal counsel in these matters.

JUNTA ESCOLAR COMUNAL
DISTRITO UNO
75AVENIDA B

SUPLEMENTO A LA PROGRAMA DE LA REUNION PUBLICA del 16 de OCTUBRE de 1973.

RESOLUCIONES:

I. Quejas y Especificaciones han sido presentados a la Junta Escolar, alegando que Luis Fuentes ha cometido hechas constituyendo insubordinacion, engano, malverso del fondos publicas, el falta a sus obligaciones, violacion de su contrato del empleo, la Junta dirige que:

A. Copias de las quejas y especificaciones seran dados a Luis Fuentes.

B. Sera una audencia con el aviso de Luis Fuentes para el recibido de evidencia en acuerdo con y en acuerdo con y en oposicion a estas quejas.

C. La Junta determina Despues de esta audencia si algunas de las quejas estan sostenidos por la evidencia y si Luis Fuentes es culpable de cualquier de tales quejas y si es verdad, la pena si hay, sera imponeda.

Durante la audencia y la determinacion de las quejas, Luis Fuentes sera suspendido de la posicion de Superintendente Communal del Distrito 1 immediatamente sin salario, y el Canciller es encargado a recomendar candidatos por designacion para la Junta como interino Superintendente.

Explicacion: El Superintendente Comunal esta permitido la oportunidad de una audencia con aviso con el derecho de representacion legal en esta queja serias.

II. La Junta nombra Richard L. Aronstein Esq. como su abogado en este asunto.

Explicacion: Es necesario por la Junta tener el aviso legal en estos asuntos.

85A

ADDENDUM TO AGENDA OF PUBLIC MEETING OF OCTOBER 16, 1973

III. The Board rescinds the procedure entitled "Personnel Selection Procedures District One" purportedly approved on March 28, 1973, and the procedure entitled "Termination Procedures" which is undated.

Explanation: The Board is unable to verify the authenticity of the alleged Personnel Selection Procedures and Termination Procedures, and therefore rescinds them.

III. La Junta rescinde el procedimiento llamado "El Procedimiento de la Seleccion del Personal de Distrito Uno" que suponimiente fue aprobado el 28 de marzo de 1973, y el procedimiento llamado "Procedimientos de Terminacion" que es sin fecha.

Explication: La Junta no puede verificar la autenticidad de los alegados procedimientos ya nombrados en la resolucion y por eso los rescinde.

CHARGES AGAINST LUIS FUENTES, COMMUNITY SCHOOL BOARD NO.1

CHARGE I - INSUBORDINATION.

Specifications:

1. In July and August of 1973 you did refuse to obey and implement an order of the Community School Board to discharge AZALIA TORRES and ANNA MARIA CARRATTINI.

2. In August of 1973 you did publicly state that you do not recognize the authority of the Community School Board and that you will not recognize or carry out its orders and directives.

3. In violation of an order of the Community School Board you did order and direct ALAN BOONE to conduct a hearing on October 10, 1973.

CHARGE II- MISCONDUCT.

Specifications:

1. In March and April of 1973, you did order, direct and participate in the solicitation of campaign funds in violation of law.

2. That in March and April of 1973, you did authorize, cause and permit the use of public funds, materials and facilities for the printing and publication of partisan political material.

3. That in July and August of 1973 you did conspire with and aid certain individuals in their effort to impede, disrupt and interfere with the conduct of public School Board meetings.

4. That in May and June of 1973, you did violate "Circular 30" in the selection and appointment of principals in District 1.

5. That in 1972 and 1973 you did unduly and improperly interfere in the affairs of Parents associations and the conduct of elections by parents associations.

CHARGE III.- CONDUCT UNBECOMING A DISTRICT SUPERINTENDENT AND PUBLIC OFFICIAL:

Specifications:

1. On April 29, 1973 and April 30, 1973 you did engage in partisan electioneering by the use of a sound truck.

2. That on May 2, 1973 you did participate in picketing in front of J.H.S. 71 together with students and others during the hours of your employment.

3. That you engaged in partisan political conduct during the campaign for the election of Community School Board members in District 1 on May 1, 1973.

CHARGES AND SPECIFICATIONS AGAINST
LUIS FUENTES, COMMUNITY SUPERINTENDENT,
COMMUNITY SCHOOL DISTRICT 1, RESPONDENT

CHARGE - DECEIT, INSUBORDINATION and CONDUCT PREJUDICIAL TO THE GOOD ORDER OF THE DISTRICT.

Specifications:

1. On September 25, 1973, Respondent falsely stated and reported to the Board that he had conducted a complete investigation of alleged improprieties occuring on school property involving hiring of personnel for a proposed bilingual program, in accordance with his prior statement on his intention to interview certain witnesses to the incident. That said report was false in that Respondent did not conduct a complete investigation and did not interview said witnesses.

2. On October 2, 1973, Respondent stated to the Board that he was not aware of any financial difficulties in the District's affairs and that he knew of nothing to justify talk in the District of the need to release between 50 and 100 teachers although prior thereto (a) Respondent had caused his deputy superintendent to announce to District personnel that in excess of 50 teachers would have to be let go, (b) prior thereto Respondent had issued an order not to hire substitute teachers and (c) prior thereto, Respondent had informed principals in the District that the District budget had been drastically cut.

3. In August 1973, Respondent threatened violence and danger to the persons of members of Board in the future in the event that they did not make "wise" decisions as such members of the Board.

4. In September 1973, at a public meeting of the Board, while in attendance in his capacity as Community Superintendent, Respondemt publicly stated that the Chairman of the Board, who was then presiding at the meeting as such, was a liar.

CHARGE II - IMPROPER COMMITTMENT AND EXPENDITURE OF PUBLIC FUNDS.

Specifications:

1. In October 1973 Respondent improperly caused and permitted the installation of partitions and the performance of other work in and about the School District Offices at a cost in excess of $7,000., with notice and knowledge of the imminent removal of the offices to another location and the necessity of restoration of those premises after such removal.

2. In or about September 1973, Respondent permitted the

improper expenditure of public funds of the District in the preparation and distribution of partisan and improper printed material relating to the District budget without the authority of the Board and prominently displayed such material in the District office.

3. Contrary to the express directions of the Board, Respondent signed a contract on behalf of the District to retain a consultant to evaluate Funded Programs, and while the matter was under review by the Board.

CHARGE III - BREACH OF EMPLOYMENT CONTRACT DATED OCTOBER 31,1972.

Specifications:

1. In July, August, September and October, 1973, Respondent made in excess of 60 appointments to teaching positions in the District without informing the Board of the existing vacancies, in violation of the provisions of paragraph 3. b. of his employment contract.

2. In October 1973, Respondent failed and/or neglected to notify the Board of his communications in writing to the chancellor, in violation of the provisions of paragraph 3.e. of his employment contract.

charge iv - INSUBORDINATION, NEGLECT OF DUTY AND INEFFICIENCY.

Specifications:

1. In October 1973, Respondent caused and/or permitted changes in resolutions on the agenda for the proposed public meeting of October 9, 1973, after its adoption at the Executive meeting of the Board, in violation of the By-Laws.

2. In October 1973, Respondent caused and/or permitted delay in reproduction and distribution of the agenda of the proposed public meeting of October 9, 1973 in time to permit due notice of the meeting to the community, thereby preventing the meeting from being held as scheduled.

3. In October 1973, in defiance of the directions of the Board, Respondent improperly expended District funds in preparing and reproducing written material to institute the Chinese bilingual program in J.H.S. 22 without the prior approval of the Board.

4. When ordered in September 1973 to conduct an investigation of charges of antisemitism at J.H.S. 22, Respondent failed to do so, and in lieu of an investigation, reported his opinions and feelings to the Board.

5. In October 1973, contrary to the express direction of the Board to conduct the aforesaid investigation personally and to report the results thereof to the Board, Respondent engaged one Algernon Black to conduct such an investigation. That in defiance of the express orders of the Board to the contrary, Respondent failed to personally conduct such investigation and caused and/or permitted Mr. Black to conduct such investigation on school premises on October 10, 1973.

6. Since July 1973 Respondent has refused and neglected to release an employee of the District, contrary to and in defiance of the expressed, repeated directions of the Board.

7. Respondent has refused to sign the District Budget Schedule (tax levy) 1973/1974 in defiance of the express orders of the Board.

8. In or about August 1973, Respondent submitted his version of a District Budget Schedule to the Central Board of Education in defiance of the express order and direction of the Community Board, and requested that said Budget Schedule be accepted and the Schedule prepared by the Board not be accepted.

9. In or about September 1973, Respondent replied to a communication concerning the status of a principal in the District and misstated and misrepresented the position of the Board.

10. Since July 1973, Respondent has failed and neglected to provide the Board with resumes of all personnel employed in the District office after repeated requests and demands, and

11. Since July 1973, Respondent has failed and neglected to take any action to restrain clearly identified employees of the District from yelling, booing and harrassing members of the Board at public meetings of the Board, and has teken no steps to discipline any such employees or to instruct or warn them to refrain from interfering with the Board in the performance of its official duties. That Respondent, in September 1973, interfered with the restoration of order at a public meeting of the Board.

1978

BY LAWS OF COMMUNITY
SCHOOL BOARD NO. 1
NEW YORK, NEW YORK

3

ARTICLE I - OFFICERS

Section 1 - Election

The officers of the Community School Board No. 1 (Community School Board No. 1 is herein generally referred to as "the Board") shall be a Chairman, a Vice Chairman, Secretary and Treasurer. Officers shall be elected by a majority vote of the whole number of the members of the Board at the annual meeting, for a period of one year, and shall continue in office until their successors have been duly elected, or until removed for just cause by a majority of the Board. Voting shall be by roll call. In case of a vacancy in those offices, the Board shall fill such vacancy for the unexpired term by a majority vote of the whole number of members of the Board.

Section 2 - Chairman

a) The Chairman shall preside at all meetings.

b) He may appoint the chairman and members of each committee, subject to a majority vote of the Board.

c) He shall execute all documents in the name and in behalf of the Board when duly authorized, and all drafts, notes, or other orders for the payment of money.

d) He shall enforce these by-laws and perform all the duties incident to his office and which are required by law and he shall carry out the policies and affairs of the Board.

e) He shall have a vote upon all questions before the Board and shall have the right to take part in the debate on any question under consideration.

f) The Board, by majority vote, may delegate the power to execute documents to such other officers or employees of the Board it designates.

g) The Board, by majority vote, may establish guidelines for the selection of committee chairman and committee members.

Section 3 - Vice-Chairman

a) The Vice Chairman shall exercise the powers and perform the duties of the Chairman in his absence.

b) He shall be an ex-officio member of all committees.

c) He shall be responsible for obtaining written reports from the chairman of all committees.

Section 4 - Secretary

a) The Secretary shall have charge of the books, papers and documents of the Board, other than those under the jurisdiction of the Treasurer.

b) He shall prepare and distribute the agendas and keep the minutes of all hearings and meetings of the Board and other groups as the Board may direct.

c) He shall provide for the publication and issuance of such minutes as may be required to be published.

d) The Secretary shall be responsible for seeing that the minutes of all meetings and hearings are supplied to each of the members of the Board at least five days prior to any subsequent public meetings or hearings.

e) He shall attend to all correspondence and present to the Board at their meetings all official communications received by him.

f) He shall have such other duties as may be determined by law or by the Board.

g) Upon a majority vote of the Board, any or all of the foregoing duties may be assigned by the Board to an Executive Secretary or Assistant Secretary, employed by it either full-time or part-time.

Section 5 - Treasurer

The Treasurer shall:

a) Have charge and custody of, and be responsible for, all funds which the Board may receive, and shall deposit such funds in the name of the Board in such depositories as are designated by the Board.

b) Maintain books of accounts and records, and exhibit them at all times to any of the members of the Board, consistant with the policy of the Board related to the acquisition of information, at the office of the Board, where such books and records shall be kept.

c) Render periodically a statement of the condition of the finances of the Board; such statement shall also be rendered when requested by the Chairman and/or three members of the Board.

d) In general, perform all of the duties of the office of Treasurer and such other duties as from time to time may be assigned by resolution of the Board.

e) Make, sign and endorse in the name of the Board, all checks, drafts, notes and other orders for the payment of money and pay out and dispose of such under the direction of the Board and as required by law in accordance with these by-laws.

f) Be a member of the Budget and Finance Committee.

g) The Board may delegate any of the above functions to a district business officer or to a person employed by the Board for such purpose.

ARTICLE II - COMMITTEES

Section 1 - Procedure

a) All members and chairmen of committees may be appointed by the Chairman subject to the approval of a majority of the Board.

b) Where the Chairman of the Board has not exercised his option to appoint a committee chairman, the chairman shall be selected by a majority of the committee.

c) The Chairman of the Board shall fill vacancies in committees by appointment.

d) All recommendations by the committee shall be reported to the Board by its Chairman or the Vice-Chairman of the Board as provided in these by-laws, and shall be subject to revision by the Board.

e) Committee reports shall contain all the views of committee members expressed during committee meetings related to the subject of the report.

f) Each committee shall operate under Roberts Rules of Order, Newly Revised. The presence of a majority shall be necessary to constitute a quorum. A majority of all the members of the committee shall be necessary to adopt any resolution.

g) The Chairman, with the approval of the Board, may appoint non-Board members to committees.

h) The Chairman, with the approval of a majority of the Board, may establish Ad Hoc Committees when he deems it necessary for the efficient functioning of the Board.

i) Standing Committee Appointments shall be for a term of one year. Each committee shall have at least 2 Board members and total membership shall not exceed 10.

Section 2 - Standing Committees

a) Budget and Finance -- This committee shall work with the Treasurer and Business Manager in the preparation of all periodic and annual budgets and reports. It shall report to the Board on capital and expense budgets, and Finance hearings. The Treasurer shall be a member of this committee.

b) Community Relations -- This committee shall maintain communications with the various groups interested in promoting quality education in the community. It shall coordinate community liaison assignments between such community groups and the Board.

c) Curriculum and Instruction -- This committee shall seek, promote and evaluate materials, methods and programs. It shall recommend innovative and experimental programs and seek funds for their implementation.

d) Federal and State Funded Programs -- This committee shall inform the Board of the progress of ongoing funded programs, and shall recommend modifications and additions to Funded Programs in the District. It shall be responsible for attending and reporting on local Advisory Council Meetings related to Funded Programs.

e) Narcotics -- This committee shall recommend new programs to the Board, report on the progress of District Narcotics Programs, and coordinate Board efforts with Community and Governmental Agencies.

f) Personnel -- This committee shall recommend to the Board policy for recruiting, hiring and firing, and transfer of staff. It shall solicit and review resumes and make recommendations to the Board. It shall be responsible for handling staff personnel problems.

g) Plant Operation, Maintenance, Lunch and Safety -- This committee shall report on the operation and maintenance of the schools in the District and coordinate efforts with the custodial staff. It shall make recommendations for the use of the District Repair Fund. It shall evaluate and report on school lunch programs and shall coordinate efforts with local agencies for the maintenance of school safety.

ARTICLE III - MEETINGS

Section 1 - Annual Election Meetings

The annual election meeting of the Board shall be held in July. At the annual meeting, the Board shall elect a Chairman, a Vice-Chairman, a Treasurer, and a Secretary.

Section 2 - Regular Meetings

Regular meetings of the Board shall be held on the first Monday of each month or on such other day as the Board shall determine. Meetings shall be held at such place or places as the Board may determine.

Section 3 - Notice of Meetings and Agenda

Notice of meetings shall be given in writing, together with the agenda of resolutions and reports which will be presented at such meeting. Brief written explanations of each resolution shall be included in the agenda. Board members shall receive such notices and agenda at least five days before each regular meeting. The agenda shall be drawn up at the executive meeting prior to the scheduled regular meeting of the Board, except that additional items may be placed on the agenda immediately with the written consent of 2/3 of the members of the whole Board.

The Board shall maintain a list of parent association presidents and other persons or organizations who express a desire to receive notice in writing of regular Board meetings, and shall mail such notice and agenda not later than five days before each regular meeting.

Section 4 - Procedures for Regular Meetings and Hearings

a) Meetings shall start promptly at the time specified in the meeting notice.

b) Individuals or representatives of organizations who wish to speak must notify the Secretary of the Board, or any other designated person, in writing or by telephone, at least 48 hours prior to the meeting.

c) Persons wishing to speak must indicate their name, address, name and address of the organization they represent, and the item on the agenda to which they wish to address themselves.

d) Each speaker will be allowed a maximum of 4 minutes. Speakers shall address themselves to the Chairman of the meeting.

e) Speakers will be grouped according to agenda topics to be discussed. Speakers within each agenda topic will be listed in the order in which their requests to speak are received.

f) All regular and special meetings shall be recorded on a tape recorder.

g) Public hearings shall be held as required by law and when deemed necessary by a majority of the Board.

h) A hearing shall be held in order to present preliminary recommendations to the community and to allow the general public to make comments on the issues under consideration persuant to the procedures established above. No official business shall be conducted at hearings.

Section 5 - Official Actions

a) Official actions of the Board must be taken at public meetings by a vote of the majority of the whole number of the members of the Board. On all questions a roll call shall be taken and the votes recorded.

b) There shall be no voting by proxy.

Section 6 - Special Meetings

Special meetings may be called by the Chairman. Special meetings must e called by the Chairman upon the written request of three Board members. Notice f special meetings must be given in writing, or by telephone, to each member of he Board at least 48 hours prior to the time such meeting is to be held. The otice shall state the special matter or matters to be presented to the Board t such meeting. Only such special matters as are stated in the notice shall be onsidered at such meeting unless the members present unanimously decide otherwise.

Where notice to the public cannot be given as provided in Section 3, otice shall be given to all parent association presidents in the same form as to oard members.

Section 7 - Quorum

A majority of the whole number of the members of the Board shall be present to constitute a quorum for the transaction of any business. If there is no quorum present at the time set for the meeting, those members of the Board who are present, after waiting a reasonable amount of time, shall adjourn the meeting to another date, and notice shall be given forthwith to all members of the Board of such adjourned meeting.

Section 8 - Absence of Chairman and Vice Chairman

If both Chairman and Vice Chairman are not in attendance at the time appointed for any meeting of the Board, the Secretary of the Board - or, in his absence, the Treasurer - shall call the Board to order. A chairman, pro tem, shall be elected by the Board for the meeting or until the appearance of the Chairman or Vice Chairman.

Section 9 - Procedures

Robert's Rules of Order, Newly Revised, shall be the guide for the Board in determining questions of parliamentary procedure not expressly provided in the bylaws or by resolution of the Board.

Section 10 - Minutes

The minutes of all regular public and special meetings of the Board shall be public records and shall be printed, or otherwise reproduced, as soon as practicable after such meetings. Such minutes are to be available at the office of the Community Board, and shall be mailed to all persons who regularly receive notice of meetings. The minutes shall report the resolutions acted upon and shall summarize the reports given.

Section 11 - Order of Business

The order of business, except when otherwise provided by rules or regulations, or specially ordered, shall be as follows:

1. Approval of minutes
2. Correspondence
3. Old Business
4. Report of Community Superintendent
5. Report of Committees
6. New Business

The regular order of business may, at any time, be suspended by a vote of a majority of the members present. The public may discuss resolutions before the Board prior to taking any vote.

Section 12 - Resolutions

All resolutions shall be presented in writing and read in full, unless a copy is furnished to each member present, in which case the resolution may be designated by title, number and subject matter.

Section 13 - Executive Sessions

The Board may hold private executive sessions as it finds necessary and helpful.

ARTICLE IV - PARENT ASSOCIATIONS

Section 1 - Parent Associations & Parent-Teacher Associations

a) There shall be a parent association or a parent-teacher association in each school within the Community District.

b) The Community Board, the Community Superintendent, and the principal of each school in the Community District shall have regular communication with all parent associations and parent-teacher associations within the Community District, to the end that such associations are provided with full factual information pertaining to matters of pupil achievement, including (but not limited to) annual reading scores, comparison of the achievement of pupils in comparable grades and schools, and the record of achievement of a child as he progresses through school (provided, however, that such records and scores shall not be disclosed to such associations in a manner which will identify individual pupils).

c. Prior to the selection, appointment and assignment of principals, the Community Board shall consult with the parent association or parent-teacher association of the school involved.

Section 2 - Council of Parent Association and Parent-Teacher Association Presidents.

a) There may be a Presidents' Council of Community District I consisting of the presidents or their representatives of the Parent Associations or Parent-Teachers Associations. The by-laws must be filed with the Board.

b) The Presidents' Council may hold regular monthly meetings with the Community Board in attendance. Said meetings shall be chaired by the Chairman of the Presidents' Council.

c) The Community School Board shall have the right to submit items it wishes to discuss to be placed on the agenda at least five days prior to the meeting. The agenda is to be made up by accepting one item from the Presidents' Council and then one from the Board, thereafter alternating one for one. In the event the agenda is over-crowded, each party will have the prerogative to select its most important topic for discussion.

d) The Presidents' Council shall have the responsibility and duty of preparing the agenda, and mail a copy of said agenda to the members of the Board at least five days before the date of the meeting, transcribing the minutes of the meeting and sending a copy to each member of the Community School Board.

e) No action by the Board is authorized at a meeting of the Presidents' Council.

Section 3 - School Board Representatives

a) Each school in the District shall have at least one member of the Board as its liaison to the Board.

b) All communications from a school to the Board and/or the Community Superintendent shall include a copy to that school's representative.

c) No member may be a representative for more than three schools.

ARTICLE V - COMMUNITY SUPERINTENDENT

Section 1 - Powers

a) The Community Superintendent shall be accountable to the Board for all District matters.

b) He shall have such powers as are provided by law and as are delegated by the Board, and/or as provided in the Contract between the Superintendent and the Board.

c) He shall submit to the Board written reports on all District matters as required by law or at the request of the Board.

Section 2 - Meetings

a) The Community Superintendent shall attend all meetings of the Board and shall have the right to speak, but not to vote, on all matters before the Board, except when his presence is not deemed necessary by a majority of the Board.

b) He shall attend executive meetings of the Board when so requested.

Section 3 - Election

The Community Superintendent shall be elected at an open meeting of the Board, at which he must receive the votes of a majority of the whole number of the members of the Board, taken by roll call.

Section 4 - Termination

The Board may terminate the contract of employment of the Community Superintendent for cause, after a hearing, upon an affirmative vote of a majority of the whole number of the members of the Board.

ARTICLE VI - UNEXCUSED ABSENCES

If any member of the Board fails to attend three consecutive regular or special meetings of the Board, unless such absence is for good cause and is excused by the Chairman or other presiding officer, the position may be deemed vacant for the purposes of the nomination and appointment of a successor.

ARTICLE VII - WITHDRAWAL OF FUNDS

All checks, drafts or other orders for the payment of money or other indebtedness issued in the name of the Board shall be signed by two members of the Board from among three members designated for such purpose. One of the three shall be the Chairman, and one shall be the Treasurer or a person elected by the Board to perform the Treasurer's duties.

ARTICLE VIII - OPENING OF BIDS

A Board member shall be present at each public opening of bids which are expected to be in excess of $2,500.

ARTICLE IX - AMENDMENTS

a) Board policies may be amended at any regular meeting of the Board by the vote of a majority of the whole Board.

b) Board by-laws may be amended at any regular meeting of the Board by the vote of a 2/3 majority of the whole Board.

c) No by-laws shall be amended unless the proposed amendment appears on the written notice of the meeting.

ZG:ecw

sented D. Kenneth Patton, who heads the superagency, at meetings involving the firm's expansion. Community leaders present at the session confirmed Levine's attendance.

Deputy Mayor Edward Hamilton released a statement today saying that Mayor Lindsay had no acknowledge either of Levine's job offer from S&S or his decision to make the switch.

Hamilton said that Lindsay had directed Commissioner of Investigations Nicholas Scoppetta to look into the situation and refer his findings to the city's Board of Ethics. The board, Hamilton said, could then "take any other action which may be appropriate."

Meanwhile, a spokesman for Councilman Fred Richmond (D-Bklyn.), who was one of the leaders of the opposition to the Northside demolition, said that Richmond's office would also ask the Board of Ethics to investigate the matter for "possible conflict of interest."

Levine, who says his new salary will be "relatively close" to what he was making from the city, was placed in charge of S&S's overseas operations.

Flaum said that Levine had "considerable experience" in overseas work within the paper machine industry before going into city government. Flaum added that possible conflict of interest charges resulting from the hiring "occurred to us, but we really felt there weren't any."

The city condemned the before the City Council, said Jan Peterson, vice president of the Northside Community Development Council, which opposed the expansion.

"We felt there was a lot of collusion between the city and S&S," she said. "I'm not surprised at all."

Industry's Output Up

WASHINGTON (AP)—The nation's industries increased their output in September, with many continuing to operate at near capacity levels, according to the Federal Reserve Board.

Board Suspends Fuentes

Continued From Page 1

backed by the United Federation of Teachers and won a majority in school boar delections in May.

As the heavily-policed meeting opened, hundreds of those present in the packed auditorium chanted, "Roher must go." Local board chairman Adolph Roher was sitting on the stage with the other board members.

Opponents of Roher and the UFT-backed majority claim voting irregularities and racial discrimination took place in the May election.

Opponents of Roher and the UFT-backed majority claim voting irregularities and racial discrimination took place in the May election.

Georgina Hoggard, former president of the board and still a member, told the crowd: "We will not allow the board to function effectively. This board was elected illegally."

Pro-Fuentes supporters in the crowd yelled, whistled and stamped their feet for over an hour, drowning out much of the official action taken at the meeting.

Hostile factions milling in the aisles of the auditorium had to be kept apart by plainclothes police officers. Scores of uniformed police were also present, but out of sight.

"Racist teachers go home," was among the chants directed at a small group of UFT representatives taking notes during the proceedings.

As the UFT contingent tried to leave the auditorium, a fight broke out. Police clashed with persons surrounding the UFT group and led off four men in handcuffs.

Nelson Gonzalez, 22, of 1765 Davidson Av. and Gary arrero, 24, of 1551 Sheridan Av., both of the Bronx; David Diaz, 31, of 765 Riverside Dr., and Rafael Valdivieso, 31, of 675 Water St. were all charged with riot in the first degree. One or more was also charged with assault, attempted assault and resisting arrest.

After the arrests, according to Fuentes supporters, an addendum to the agenda was then placed on the stage in the form of a suspension resolution. In it were allegations accusing Fuentes of "insubordination, deceit, misapplication of district funds, neglect of duty, violation of his employment contract, conduct prejudicial to the good order of the district and other acts of misconduct."

Pro-Fuentes board member Henry Ramos then accused his fellow members of being: "Racist Jews—not the Jews of the community but these racist Jews." Ramos began overturning the tables on the stage behind which the board members were sitting.

Escorted by police, Roher moved the board to the projection room from which Ramos was ejected before the vote. While the noise in the auditorium muffled all but the final announcement, a UFT representative said the final vote had been six in favor of suspending Fuentes and two abstentions.

pack of dominoes.

Certainly, some residents have given up. Msgr. John McCarthy, pastor of Holy Spirit Catholic Church on University Av., reports that some middle-class Puerto Rican families are fleeing, just as their Jewish and Irish predecessors left in an exodus that began in the late 1960s.

But McCarthy and other community leaders say there is evidence of a growing determination among Morris Heights' 45,000 residents to organize to improve conditions.

"There's an upward feeling," says McCarthy. "I think one of the things that makes for a slum is lack of hope, but we have hope that things are looking up."

Located between Highbridge and University Heights, Morris Heights is bounded by the Cross-Bronx Expwy on the south, Burnside Av. on the north, Jerome Av. on the east and the Harlem River on the west.

On Burnside Av., the main shopping street, the Shamrock Tavern still hangs on, and a kosher delicatessen and a daily restaurant owner continue to cater to the area's remaining Jewish residents. "What can I tell you?" said the restaurant owner as he pulled a tray of home-baked potato knishes from the oven. "I was happy before. Now I am in trouble a bit. That's all."

As in other neighborhoods that have undergone rapid population turnover, it has taken awhile for new com-

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WHICH BUDGET (CHOICE) FOR 1973-74?
EFFECTS ON YOUR DISTRICT OFFICE STAFF

SUPERINTENDENT FUENTES' BUDGET

PLANNED WITH PARENTS AND AT PUBLIC MEETINGS.
INTEGRATED, AND RESPONSIVE TO PARENT'S NEEDS AND WISHES

ADMINISTRATIVE

☆	FRANCES BARRETT	Adm. Asst.	$ 9,700.
☆	DEBBIE McGEE	Sch Sec.	$ 2,400.
☆	EDWARD KING (To Go Per Sen. List. City Com. Sch. Dt.)	Bus. Mgr.	$ 20,279.
☆	JANICE WONG	TYPIST	$ 5,200.

PROFESSIONAL

☆	LETICIA WEISS	Coord. Bi-ling Tchrs	$ 21,930.
☆	CHARLES SCARDINO	PERSONNEL DIR.	24,410.
☆	LESLIE LEWIS	ATTENDANCE COORD.	21,300.
☆	FRANCIS KIRSCHNER	SEC. Progm. Coord.	21,300.
☆	FLORA BELLE ZALWSKIN	Ass't Curriculum Coord.	24,410.
☆	CLAYTON FLOWERS	BLACK STUDIES COORD.	18,100.
☆	IRVING ESSNER	DIR CURR.	27,620.

To Go To JHS 82 AND REMOVE ALLAN BOONE for Princ.

CARL LIGGIO	SEC. PERS. COORD.	$ 27,620.
MIRIAM GOLDSHEIN	GUIDANCE SUPERV.	23,200.
HELEN ROBITZEK	CONT ED. SUPERV.	21,930.
KATHLEEN GILLIGAN	LIBR. SUPERV.	21,930.

COMMUNITY - BASED

☆	FAITH WRIGHT	PARENT - COMM. INFO.	$ 13,000.
☆	AZALIA TORRES	SR. NEIGHBORHOOD WKR.	9,600.
☆	AWILDA ESPERON	ATTENDANCE AIDE	5,200.
☆	VACANT	ATTENDANCE AIDE	5,200.
☆	VACANT	ATTENDANCE AIDE	5,200.
☆	TITO ESPERON	ASS'T STOCK MGR.	6,300.
☆	ANA CARATTINI	TRANSLATOR (SPANISH)	5,200.
☆	PAUL LEE	TRANSLATOR (CHINESE)	5,200.
☆	VACANT	PARENT TRAINER	5,200.
☆	VACANT	PARENT TRAINER	5,200.

EXPLANATION

EVERYONE WITH A STAR (☆) WILL BE FIRED IF MR. ROHER'S BUDGET IS PASSED.

EVERYONE WITH A CHECK (✓) WILL BE NEW PEOPLE-JOBS FOR MR. ROHER'S FRIENDS AND FOR TEACHERS!

RESULTS =

- ALL PUERTO RICAN AND BLACK SUPERVISORS WOULD BE FIRED
- TEACHERS AND THE UFT. WOULD RUN THE DISTRICT OFFICE
- THE OLD SUPERVISORS [ALL WHITE] HIRED UNDER DR. ERDBERG, THE FORMER SUPT., WOULD STAY
- ALL COMMUNITY-BASED WORKERS WOULD BE FIRED.

FIRINGS WOULD BE A PURGE, WITH NO EVALUATIONS, NO HEARINGS, NO "DUE PROCESS".

MR. ROHER'S BUDGET (3/21/73 - EXEC. MTG.)

NO PARENT CONSULTATION OR PUBLIC MEETING,
NO BLACK OR PUERTO RICAN SUPERVISORS,
NO COMMUNITY-BASED WORKERS

ADMINISTRATIVE

✓	SCHOOL SECT.		$ 10,800.
✓	SCHOOL SECT		~~$ 10,800.~~
✓	CLERK		$ 5,200.
✓	CLERK		$ 5,200.
✓	STENOGRAPHER		$ 5,900.
✓	STENOGRAPHER		$ 5,900.

PROFESSIONAL

✓	TEACHER - COORDINATOR	$ 19,250.
✓	TEACHER - COORD.	19,250.
✓	TEACHER - COORD.	19,250.
✓	TEACHER - COORD.	19,250.
✓	TEACHER - COORD.	19,250.
✓	TEACHER - COORD	19,250.
✓	TEACHER	10,156.
✓	TEACHER	10,156.
✓	TEACHER	10,156.
✓	TEACHER	10,156.
✓	TEACHER	10,156.

CARL LIGGIO	SEC. PERS. COORD.	$ 27,620.
MIRIAM GOLDSHEIN	Guidance Superv.	23,200.
HELEN ROBITZEK	CONT ED. SUPERV.	21,930.
KATHLEEN GILLIGAN	LIBR. SUPERV.	21,930.

COMMUNITY - BASED

WORKERS FROM THE COMMUNITY WHO SERVE PARENTS...

NONE!

NOTE: THIS WAS PREPARED AS A PUBLIC SERVICE BY SCH. BD MBRS. L. BROWN, C. HOLLAND, AND H. PINNOS AT THE REQUEST OF THE PRESIDENT'S COUNCIL.

E 100

US DISTRICT COURT
FILED
OCT 19 1973
S. D OF NY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

vs.

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 Civ. 3983

TEMPORARY RESTRAINING ORDER

Upon the pleadings and papers previously filed herein, including the two days of hearings of testimony had to date, the affidavit of Georgina Hoggard, sworn to October 17, 1973, and defendants' Exhibits A through K to the affidavit of Doron Gopstein sworn to on October 18, 1973, and it appearing that it is necessary to expand the scope of the temporary restraining order of this Court dated October 9, 1973 in order to maintain the status quo pending the completion of the hearing on and the determination of plaintiffs' motion for a preliminary injunction, it is

ORDERED, that pending the determination of plaintiffs' motion for a preliminary injunction previously filed herein, defendants Community School Board of District One and its members are temporarily restrained from:

1. implementing the suspension of Luis Fuentes as Community Superintendent of Schools including but not limited to:

(a) suspending his pay;

(b) preventing him from occupying his office;

(c) preventing him from fulfilling the duties of a Community Superintendent of Schools

as required by the New York State Education Law and the rules and regulations of the New York City Central School Board;

2. implementing the recission of the personnel selection procedures and termination procedures established for Community School District One prior to July 1, 1973;

3. removing the District's offices from Junior High School 71; and it is further

ORDERED, that this order is without prejudice to any party applying for modification of this order, or for further relief, upon a proper showing, including that administrative and educational procedures established by law are not being followed by Community Superintendent Fuentes or any other party affected by this order, and it is further

ORDERED, that service of a copy of this order and the supporting papers upon which the same was granted on counsel in this action for defendant Community School Board of School District One shall be sufficient service of this order.

SO ORDERED.

Dated: New York, N. Y.
October 19, 1973.

/s/ Charles E. Stewart, Jr.
United States District Judge

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By Ea Becker
Deputy Clerk

102

The City of New York

LAW DEPARTMENT

MUNICIPAL BUILDING, NEW YORK, N.Y. 10007

NORMAN REDLICH, *Corporation Counsel*

December 10, 1973

Hon. Charles E. Stewart, Jr.
District Judge
Federal District Court
Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

Re: Coalition for Education in District One, et. al. v. Board of Elections of the City of New York, et. al.
73 Civ. 3983

Dear Judge Stewart:

I would like to bring to your attention certain recent developments affecting budget and personnel in Community School District No. 1. These developments and the actions required by them are not related to the above cited action presently pending before the Court nor are they enjoined by the temporary restraining order presently outstanding. However, since they involve the removal of personnel, pursuant to State law, I thought it would be appropriate to inform the Court of these developments to avoid any possible misunderstanding of the reason for and nature of these actions should they be brought to the Court's attention at any future date.

Section 1704, subdiv. 1 of the New York State Education Law provides that:

> "No board of education or community board in the city school district of the City of New York, except as otherwise provided by law, shall authorize or permit the expenditure of funds under its control at a rate which will exhaust the amount appropriated prior to the conclusion of the period or the completion of the purpose for which such funds were appropriated."

Since the beginning of the current school fiscal year in July, 1973, District One has been overbudgeted and has thus had to make reductions in staff to conform to available funds. Partly because of internal difficulties within the District between the Community Board and the Superintendent, of which the Chancellor and his staff are aware, such necessary reductions in staff have not been made.

After numerous meetings and communications on this subject, Chancellor Irving Anker last week sent a letter to the Community School Board and the Community Superintendent (copy attached) directing that a budget schedule and a related reorganization plan be submitted to bring the District into conformance with its available allocation. The Chancellor noted that "such a plan would delineate the positions, salaries and staff that would have to be deleted to effectuate the necessary economies."

Such action has become urgent since "the indebtedness of District #1 not only worsens each day but its elimination becomes increasingly difficult."

Section 2590-1(1) of the Education Law provides that:

> "If, in the judgment of the Chancellor any community board fails to comply with any applicable provisions of law, by-laws, rules or regulations, directives and agreements, and efforts at conciliation with such community board have failed, he may issue an order requiring the community board to cease its improper conduct or to take required action..."

In his letter, Chancellor Anker has warned that "failure by your Board to comply with these directives may compel me further to consider that I exercise my authority under the law to take the necessary corrective action directly to bring the district into budgetory compliance."

Community School Board No. 1 is presently taking the steps necessary to comply with the Chancellor's directive and with the requirements of State law.

I think it is clear that these actions are in no way restrained by any of the specific provisions of the two temporary restraining orders signed by the Court on October

10 and October 19, 1973, and still in effect. To the contrary, I believe that the emphasis of the second decretal paragraph of the October 19 order on the importance of following "administrative and educational procedures established by law" makes the ordered actions entirely consistent with the spirit of the Court's order.

I have brought this situation to the Court's attention to help prevent any surprise or possible misunderstanding that might arise regarding the reason for the actions directed by the Chancellor.

Very truly yours,

Doron Gopstein
Assistant Corporation Counsel
Attorney for Respondents

cc: Frederick Sherman, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

COALITION FOR EDUCATION DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

----------x

73 Civ. 3983 (CES)

TEMPORARY RESTAINING ORDER

Upon the pleadings and papers previously filed herein, the hearings of testimony had herein, and the affidavits submitted of ~~Georgina Hoggard~~, sworn to the 24th and 26th day of December, 1973, together with the exhibits annexed thereto, and it appearing that it is necessary to expand the scope of the prior temporary restraining order of this Court in order to maintain the status quo pending the determination of plaintiffs' action for a permanent injunction, it is

ORDERED, that pending the final order ~~decision~~ herein on the merits of the action previously tried, defendants and their various members, agents, servants and employees are temporarily restrained from:

1. taking any action toward implementing the District Budget Schedule for Fiscal Year 1973/74 for Community School District One proposed by Community School Board One and adopted by the Chancellor of the Board of Education on or about December 18, 1973, and scheduled for implementation on January 2, 1974, or any revision or modification thereof;

2. eliminating any positions, job classifications or programs or activities now in existence in Community School District One;

3. taking any action toward terminating the employment of any person now employed in District One other than via the normal due process and evaluation procedures; and it is

FURTHER ORDERED, that service of a copy of this order on the Corporation Counsel for the City of New York shall be sufficient service of this order.

Dated: New York, New York
December 26, 1973

/s/ CHARLES E. STEWART, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK - x

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 CIV. 3983 (CES)

AFFIDAVIT IN SUPPORT OF EXPANDED TEMPORARY RESTRAINING ORDER

- - - - - - - - - - - - - - - - - x

State of New York)
County of New York) ss.:

GEORGINA HOGGARD, being duly sworn, deposes and says:

1. I am a member of Community School Board One ("CSB 1"), and make this affidavit in support of plaintiffs' motion for an expanded Temporary Restraining Order to enjoin (a) the implementation of a budget for District One just adopted by the Chancellor, and (b) the elimination of any positions and the termination of anyone's employment and any programs in District One, all pending the Court's decision in this case.

2. Since July 1, 1973, District One has been functioning on last year's tax levy budget allocations. This has resulted in a continuing overexpenditure of funds due essentially to this year's increase in citywide teacher salaries and a decrease in the total number of pupils in District One. All parties concerned have of course been fully aware of this budgetary situation. However, because of the dispute over educational goals and philosophy now raging in the district, as represented by the six-man majority of CSB 1 on the one side, and the Community Superintendent and the three-man minority of CSB 1 on the other side, a budget has never been agreed upon for the 1973/74 year for District One.

3. Moreover, the delay in stopping the overexpenditure and in making up the deficit is directly attributable to the willingness of the Chancellor and CSB 1 to await the outcome of

this case before adopting a budget, since there is general agreement with the proposition that the budget should express the will of the electorate (the community), and it is precisely the identity or will of the electorate which is at issue in this case.

4. However, some time in early December, 1973, the Chancellor apparently decided that the overexpenditure must finally cease. In a letter to CSB 1 and the Community Superintendent, a copy of which is annexed hereto as Exhibit A, he directed the preparation and submission to him of a budget schedule and plan for reorganization by December 10, 1973 (later extended to December 12, 1973), to insure that there not be ultimate overexpenditure of funds for the entire 1973/74 year in the district.

5. On December 12, 1973, CSB 1 with the approval of its six-man majority forwarded its proposed budget ("the CSB Budget") to the Chancellor, together with a letter dated December 11, 1973 suggesting a method of making up the deficit created by the aforementioned overexpenditure. Copies of the CSB Budget and the letter of December 11, 1973, are hereto annexed as Exhibits B and C.

6. Prior thereto, and on November 9, 1973, the Community Superintendent had submitted his own proposed budget to the Chancellor, a copy of which is hereto annexed as Exhibit D. This budget generally continues the policies and programs now existing in District One and does provide for a reduction of allocations to comply with the reduced amounts permitted for 1973/74. This budget proposal did not have the approval of the six-man majority of CSB 1, and therefore the Chancellor had not adopted it.

7. On December 18, 1973, the Chancellor met with the members of CSB 1, the Community Superintendent and Charles Scardino of the Superintendent's office with regard to the proposed budgets. I was present at that meeting as a member of CSB 1, and thus am personally familiar with what transpired. Adolph Roher, the Chairman of CSB 1, requested the Chancellor to accept the CSB Budget, and also presented to the Chancellor a memorandum entitled "Staging of Implementation of Proposed Budget Retrenchment", a copy of which is annexed hereto as Exhibit E. The Chan-

cellor then stated that he was adopting the CSB Budget because it had the approval of a majority of the local board, and that it would be effective January 2, 1974.

8. Thereafter, on December 21, 1973, Mr. Roher sent a telegram to the Community Superintendent, a copy of which is annexed hereto as Exhibit F, which details the immediate implementation of the CSB Budget as of January 2, 1974.

9. The CSB Budget, if allowed by this Court to be put into operation, will have an immediate, drastic and probably irreversible effect on District One by eliminating a variety of programs and positions now in existence and closely related to and necessary for the now prevailing educational philosophy and goals in the district. The CSB Budget will also emasculate the office of the Community Superintendent by stripping of his essential staff personnel. These serious, permanent effects may be seen by reading Exhibits C, E and F, and by comparing the CSB Budget (Exhibit B) with the budget proposed by the Superintendent on November 9, 1973 (Exhibit D), which latter budget did not create any new positions but instead merely cut existing teacher positions because of the reasons set forth in paragraph "2" supra and in a manner entirely congruent with the now prevailing philosophy in District One. Thus, the CSB Budget reduces the number of:

(a) positions in the Community Superintendent's Office, as follows:

(1) senior clerk: from two (page 1 of 28, Ex. D) to one (p. 1 of 27, Ex. B);

(2) elementary principal: from two (p. 3 of 28, Ex. D) to one (p. 3 of 27, Ex. B);

(3) assistant principal: from one (p. 3 of 28, Ex. D) to none (p. 3 of 27, Ex. B);

(4) supervisor (var. subj. & prog.): from two (p. 3 of 28, Ex. D) to one (p. 3 of 27, Ex. B);

(5) school secretary: from one (p. 3 of 28, Ex. D) to none (p. 3 of 27, Ex. B);

(6) adminstrative assistant: from one (p. 4 of 28, Ex. D) to none (p. 3 of 27, Ex. B);

(7) supervising stenographer: from one (p. 4 of 28, Ex. D) to none (p. 3 of 27, Ex. B);

(8) assistant stockman: from one (p. 4 of 28, Ex. D) to none (p. 3 of 27, Ex. B);

(9) sr. school neighborhood worker: from one (p. 4 of 28, Ex. D) to none (p. 3 of 27, Ex. B); and

(10) supervising clerk: from one (p. 4 of 28, Ex. D) to none (p. 3 of 27, Ex. B).

(b) school guards assigned to Junior High Schools: from 5280 man-hours (p. 6 of 28, Ex. D) to none (p.5 of 27, Ex.B);

(c) assistant Junior High School principals: from 21 (p. 8 of 28, Ex. D) to 18 (p. 7 of 27, Ex. B); and

(d) elementary school principals: from 17 (p. 12 of 28, Ex. D) to 16 (p. 11 of 27, Ex. B).

The CSB Budget provides for 16 more elementary school teachers, 6 more Junior High School teachers, and 3 more stenographers than does the proposed budget of the Superintendent (compare pp. 11, 7 and 3 of 27, Ex. B, with pp. 12, 8 and 4 of 28, Ex. D, respectively).

10. In addition to eliminating the foregoing positions, most of which are vitally instrumental in continuing the work of the Superintendent's Office in District One and of maintaining the present orientation of the school system therein, the majority on CSB 1 would also now, as per its letter of December 11, 1973 (Exhibit C), its memorandum of December 18, 1973 (Exhibit E), and its apparent but unclear modification thereof in its telegram of December 21, 1973 (Exhibit F), virtually complete its intended dismantlement of the present programs, procedures, policies and personnel in District One by eliminating the night and weekend Continuing Education programs and excessing many, if not all, of the Bilingual Community Relations teachers in the district. These Bilingual teachers function at the core of the community-oriented educational programs in District One presently; they serve as liaisons between the schools and the parents; they are as vital to the current system as any other factor in

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the district, probably more than any other factor. To eliminate them is to cut the heart out of the present system.

11. The adoption and implementation of the CSB Budget thus represents a drastic and radical departure from the status quo in District One. It further will undoubtedly lead to irreversible changes in the district and to the lives of many individuals. Some of those who would be cut may find other employment quickly and may not be able to come back to District One if the election is invalidated and a different budget is adopted (as would appear most likely in case of the invalidation of the election, since the CSB Budget does not represent the Chancellor's thinking, only his acceptance of what the majority on the local board wanted). The loss of such individuals could be devastating, given the time and effort required to build up trust and working relationships on a one-to-one human level in such acutely sensitive positions as Bilingual Community Relations Teacher. Others cut may not be able to find other employment for a long time, or ever, given the publicity and passionate feelings concerned with and surrounding the issues and personalities in this entire matter. To lose one's job and have it be public knowledge can be the equivalent of having been fired for cause: headlines, faces, names are remembered; reasons are soon forgotten. The damage to reputations can obviously be severe in such a situation. Moreover, the schools and the children in them will be seriously disrupted by these budget changes.

12. All of these effects would be needlessly caused if the election is invalidated by the decision herein. True, a budget must be adopted quickly to get in line with allocations; but to repeat, if a new election is ordered, the Chancellor will have many more options open to him than he has heretofore allowed himself with regard to the budget, and there is no inherent likelihood that he will choose the CSB Budget over the Superintendent's proposed budget or any other budgetary suggestions if the six-man majority is no longer sitting on CSB 1.

13. A few days more under the old budget will really not amount to significant overspending as compared to what has

already occurred and what has already been tolerated by the Chancellor himself. To insist now, with the Court's decision expected in a matter of days, on implementing a radically different budget in this already troubled and tense district is irrational and almost certainly a false economy.

14. The CSB Budget should not be implemented for further reasons which may or may not become moot, depending on the outcome of the decision herein, but which reasons strongly suggest the need for expanding the temporary restraining order as requested herein. To wit:

(a) The positions to be eliminated by the CSB Budget are now filled by persons whom the six-man majority believes to be politically associated with Mr. Fuentes, either because these persons work with Mr. Fuentes, or because they have expressed their beliefs (as many of them have). The elimination of their positions therefore really appears aimed at terminating their employment because of their real or assumed beliefs and expressions. A comparison of the names on the telegram (Exhibit F) with those on the so-called "purge list" made up by the six-man majority on August 14, 1973, a copy of which is hereto annexed as Exhibit G, reveals that Flora Belle Zaluskin, Frances Barrett, Janice Wong, Frances Kirschner, Deborah McGee and Leticia Weiss are all on both documents. Moreover, Jeri Kinney and Anita Batisti, both hired by Mr. Fuentes since August, 1973, and even the eleven teachers named on the telegram to be excessed all of whom were on information and belief hired since July or August of this year, are apparently being classified by the majority on CSB 1 as Fuentes supporters, and thus are seemingly being purged. (In fact, I am informed that at least two of the eleven teachers are being excessed in violation of Board of Education regulations or contractual rights secured by theunion, which lends further credence to the foregoing analysis of a purge.) This apparent political retaliation, if true, is offensive to the Constitution of the United States and should not be countenanced or permitted by this Court.

(b) The CSB Budget was made without any consultation

with the parents of District One, in violation/of the I believe requirements of the Board of Education as stated in the official Board of Education pamphlet entitled "Parent Associations and the Schools", a copy of which is hereto annexed as Exhibit H, on pages 10 and 11 thereof (where marked).

(c) The Chancellor adopted the CSB Budget without consulting with the Community Superintendent thereon, as required/by section 2590-i(3) and (8) of the Education Law of New York. I believe

15. Moreover, although counsel for defendants has previously advised the Court by letter dated December 10, 1973, that state law (section 1704 (1) Education Law) requires the cessation of the current overexpenditure, I am advised by counsel that section 2590-i of the Education Law provides in several of its subdivisions for the allocation of additional funds to a particular community school district in an emergency for extraordinary expenses such as that existing now in District One (see section 2590-i(9)), or for innovative programs or activities (see section 2590-i(10)). These two sections, plus others perhaps, clarify the meaning of the phrase "except as otherwise provided by law" included in section 1704(1) Education Law, and clearly demonstrate that the current overexpenditure can lawfully continue.

16. Thus, a broader restraining order is now required to insure that the status quo will be maintained in District One pending the decision in this case, since the majority on CSB 1 has again made it crystal clear that it plans to use every means available to carry out its announced program of irreversibly changing the policies, procedures, programs and personnel of the district prior to the Court's determination of the legality of the May 1, 1973 elections. In view of the Chancellor's previously expressed desire to await the outcome of this case, I cannot see how a few days more will cause further budgetary disruption significant enough to warrant the immediate implementation of a substantially new budget at this time.

Wherefore, I pray respectfully that the plaintiffs'

application for an expanded Temporary Restraining Order in the form annexed hereto be granted.

Georgina Hoggard
GEORGINA HOGGARD

sworn to before me this
24 day of December, 1973

James Kaufman

NOTARY PUBLIC, State of New York
Qualified in Queens County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

COALITION FOR EDUCATION DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 Civ. 3983

INTERIM ORDER

- x

Whereas plaintiffs have brought this action challenging the legality of the May 1, 1973 school board election in Community School District One on the grounds that the election was conducted in a racially discriminatory manner, and

Whereas a hearing was held in October, 1973 on plaintiffs' Motion for a Preliminary Injunction, and following such hearing the parties stipulated that the hearing should constitute a full hearing on the merits of the plaintiffs' claim as to the May 1 District One election, and

Whereas following this hearing, this Court has found that the May 1 District One school board election was conducted in a racially discriminatory manner, and therefore in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Acts of 1965 and 1970 as amended, and

Whereas this Court shall issue forthwith detailed Findings of Fact, Conclusions of Law and a Final Order ordering that a new election be held as soon as possible pursuant to procedures specified in a subsequent supplemental order, and

Whereas, an orderly procedure is required for the governance of Community School District One pending the election of a new school board,

It is therefore,

ORDERED that the May 1, 1973 election for membership to the school board of Community School District One is declared invalid and the positions on the school board of Community School District One are declared to be vacant, and it is further

ORDERED that pending the election of a new school board for Community School District One, the Chancellor of the City School District of the City of New York shall exercise the statutory and administrative powers of the school board of Community School District One, and it is further

ORDERED that this interim order is subject to modification upon application of any party.

SO ORDERED.

C E S

United States District Judge

Dated: New York, N. Y.
January 4, 1974.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al., Plaintiffs, - against - THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al., Defendants.	73 Civ. 3983 (CES) PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs respectfully submit the following proposed findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiffs, Puerto Rican, Black and Chinese voters of Community School District One in Manhattan, the Coalition for Education, an unincorporated association, and candidates supported by the Coalition, bring this action challenging the conduct of the School Board election held in District One on May 1, 1973 on the grounds that the election was held in a racially discriminatory manner. The action also challenges the selection and performance of election inspectors who serve at New York City elections on the grounds that their selection and performance result in racial discrimination in the conduct of elections.

2. When the present Community School Board of District One moved to terminate certain District staff employees, the plaintiffs brought on a motion for a preliminary injunction by order to show cause. That motion put in issue only plaintiffs' claim that

the District One elections were conducted in a discriminatory manner. Hearings on the motion were had before this Court on October 15, 16, 19, 23, 25, 26, 29 and 30, 1973. Plaintiffs and defendants called numerous witnesses including voters, poll watchers, election inspectors and Board of Elections officials and introduced a large number of documents, statistical tables and maps into evidence.

3. At the conclusion of the hearing, counsel for the plaintiffs and the defendants stipulated that the hearing on the motion for a preliminary injunction should be considered the full trial on the merits of plaintiffs' claim that the May 1, 1973 School Board election in District One was invalid. Counsel further stipulated that the Court's decision should constitute judgment on the merits of the claim.

THE BACKGROUND

4. Community school districts came into being in 1969 in New York City when the New York State Legislature passed the Decentralization Law, New York Education Law § 2590. The Decentralization Law calls for the election of a nine-member community school board for each community school district. There are at present thirty-two such school districts. The first School Board elections were held in 1970, and the second School Board elections were held on May 1, 1973 (R.* 50, 639).

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* "R" references are to the trial transcript.

5. Community School District One is located in Manhattan's Lower East Side. District One extends from the East River, west along 14th Street to Fourth Avenue, south along Fourth Avenue and the Bowery to Delancey Street, east along Delancey Street to Clinton Street, south along Clinton Street to the middle of the block between Madison and Cherry Streets, west one block to Rutgers Street, south one-half block to Cherry Street, west one block along Cherry Street and then south along Pike Slip to the East River (P*-16, 22, R. 68).

6. The racial composition of District One is heterogeneous. Census figures show District One's population to be 41.4% Black and Puerto Rican (P-15). The school population, however, has a much higher proportion of minority members, Nearly 93% of the children attending District One schools are Black, Puerto Rican or Chinese (P-1).

7. The racial mix of the District One population is not uniform throughout the District. Several areas are virtually all White. These include the Grand Street area which contains middle-income housing cooperatives, a middle-income housing development along First Avenue between 3rd and 6th Streets, and a middle-income housing area near 170 Avenue C. Correspondingly, certain areas of District One are virtually all Black and Puerto Rican. In particular these areas are east of Avenue B from Houston to 14th Streets, and include a number of low-income housing areas south of Houston Street (P-16, P-16a).

8. There were thirty-three polling sites for District One voters utilized in the May 1, 1973 election (P-12, P-14).

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* "P" references are to plaintiffs' exhibits in evidence.

These polling sites were located throughout District One and because of the diversity of the racial composition in the various areas of District One, some polling sites serviced a predominantly White voting population while others serviced a predominantly Black and Puerto Rican voting population. A table listing the various District One polling sites on May 1 and providing census data on the racial makeup of the election districts located at the various sites as well as other data which are discussed below is set forth as an appendix to these Findings.

9. There are two categories of eligible voters in School Board elections: all regularly registered voters, and parents of public school children. Unregistered parents must register specially and regularly registered voters living outside a particular school district but having children in the District's schools must register as parent voters in order to vote in the School Board election for the district in which their children attend school. New York Education Law § 2590-c (4).

10. Because the proportion of minority members in District One's school population is so much higher than the proportion of minority members in District One's resident population, and because of past patterns of low minority registration for regular elections, the proportion of minority members among District One's parent voters is far higher than the proportion of minority members among District One's regularly registered voters (P-1, P-2, P-15, R. 40-42).

11. Interest in the May 1, 1973 School Board elections in District One was intense. Registration of regular and parent voters prior to the election was the highest in New York City and

the proportion of voter turn-out on Election Day was more than twice the city-wide average (R. 99, 100, P-4, D*-H).

12. Two "slates" of candidates and three independent candidates ran for School Board in District One. One slate, which was popularly referred to as the "community slate", was supported by plaintiff Coalition for Education and was to a large degree associated with the interests of minority residents of District One. The other slate was associated with and supported by the United Federation of Teachers ("UFT") and was identified with the interests of White residents of District One (P-7, pp. 21a, 21c; D-D; D-E; D-F; D-G; D-O; R. 288, 458, 492, 506, 511, 513, 522, 531, 548, 752). The campaign was bitterly fought between members of the two slates in an atmosphere of considerable racial tension and hostility (R. 178, 220, 259, 554, 556, 596, 604, 605, 610, 611).

13. Potential difficulties in conducting the 1973 School Board elections fairly, and in allowing the full participation of minority voters, were apparent to both Board of Elections officials and interested observers well in advance of Election Day. Meetings were held between various interested groups and Board of Elections officials, proposals were presented, and several lawsuits were begun in an attempt to remedy certain perceived deficiencies in the procedures for holding School Board elections (R. 36, 52, 119, 645-50). This Court issued orders on February 16, 1973, March 9, 1973, March 21, 1973 and April 20, 1973 requiring the provision of multi-lingual election materials as well as translators for the elections. Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y.).

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* "D" references are to defendants' exhibits in evidence.

14. In response to the various pressures brought to bear Board of Elections officials made certain efforts prior to the election that they believed would remove impediments to the participation of minority voters in the School Board elections. These efforts included the preparation of instructions for voters in languages not covered by the Lopez orders, and implementation of a special deputy registrar system, which expanded opportunities for registration of parent voters by volunteers (R. 52, 647, 648).

CONDUCT OF THE ELECTION

15. Despite the efforts described above by interested civic groups, individuals and Board of Elections officials, the evidence adduced at the hearing makes the conclusion inescapable that the May 1, 1973 School Board election in District One was conducted in a manner that discriminated against the Puerto Rican, Black and Chinese voters in the District. The discriminatory conduct took three forms: that which constituted a violation of or departure from the statutory Election Law or established procedures and which had a racially discriminatory impact, that which was not on its face violative of law or irregular but which had a racially discriminatory impact, and which has not been explained or justified by the defendants; and that which was intentially, subjectively discriminatory.

IRREGULARITIES WITH A RACIALLY DISCRIMINATORY IMPACT

16. Although the Board of Elections consultant who was hired to run the 1973 School Board elections testified that

packages of election materials were prepared and sent to each polling site, there was a great deal of testimony that at certain polling sites these materials either arrived late on Election Day or did not arrive at all (R. 431, 489-90, 500, 512, 524, 530, 265, 276, 598, 612, 625, 180, 333, 112). There was testimony to the effect that at particular polling places there was an absence of polling booths (R. 496, 230, 598, 524, 530), ballot boxes (R. 329, 431) and ballots (R. 226, 612).

17. In some instances the absence of materials resulted in the substantially delayed opening of the polls (R. 329, 431, 473, 512, 520, 458, 465). For example, the polling place located at Emanuel Presbyterian Church, a predominantly Black and Puerto Rican voter site, did not open until 12:30 P.M. because of the absence of a ballot box (R. 329, 431). All of the testimony concerning missing materials and resulting delays in the opening of the polls related to polling sites in the largely minority areas of District One.* There was testimony that materials shortages did not interfere with the smooth operation of the polling places in predominantly White areas (R. 254).

18. Despite the Board of Elections' efforts to facilitate voting by individuals with language difficulties by printing multi-language materials, there was considerable testimony by witnesses

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* There was testimony that one election district located at P.S. 63 did not open until after 9:00 A.M. (R. 118, 625). While this would normally be characterized as a voting site that is not predominantly Black and Puerto Rican, the addition of the P.S. 63 parent voters to the eligible voters for the election district which did not open on time changed the racial composition of the voters serviced by this table. It became predominantly Black and Puerto Rican for this School Board election (P-4, P-14, R. 265).

for both the plaintiffs and the defendants that the multi-language instructions were not visibly displayed and readily available to voters at the polling sites on Election Day (R-490, 500). The effect of the absence of such materials would obviously be greatest on Spanish and Chinese-speaking voters.

19. Irregularity in the registration, processing and handling of parent voters resulted in racial discrimination because of the overwhelming proportion of minority members among parent voters. There was evidence that the cards of some parents who had registered were not properly processed. Many cards consequently did not reach the polling site for Election Day, while others that did arrive were insufficiently processed, thereby depriving the registrants of their right to vote (R. 185, 231, 251, 338, 701, 705, 716, 717, 546, 552, 447, 467, 483, 754-760).

20. The Executive Assistant State Attorney General who supervised the Attorney General's surveillance of the District One election testified that books of parent voter cards arrived late at P.S. 20, P.S. 4, P.S. 63 J.H.S. 60, and possibly other polling sites on the day of the election (R. 597, 525, 604). In at least one polling site -- J.H.S. 71 -- the parent-voter cards did not arrive at all and consequently eighty-three parent voters, most of them Puerto Rican, Black or Chinese, were deprived of the opportunity to vote (R. 114, 536, P-4).

21. Additionally, there appears to have been a lack of established policy as to where parent voters were to vote. School officials were advised that parents should generally vote where their child attends school (P-13), but not all schools in District One were utilized as polling sites on May 1, 1973 (P-12, R. 116).

There was additional confusion as to where parent voters should vote within a school polling site servicing more than one election district (R. 113). Further, parents of District One school children voting at polling sites which also serviced voters from School District Two were improperly instructed to vote for District Two candidates (R. 227).

22. Written identification was required of voters at certain election districts before they were allowed to vote and not at others. All of the polling sites about which there was testimony with regard to written identification being required -- P.S. 34, P.S. 61, P.S. 64, P.S. 160, J.H.S. 71, Emanuel Church -- were in predominantly Black and Puerto Rican areas, except P.S. 63* (R. 290, 302, 418, 613, 614).** The failure to produce any written identification or to produce satisfactory written identification resulted in the denial of the right to vote even in instances where the name and address were found on the computer list. The process of requiring written identification and deciding whether the written identification produced was sufficient greatly increased the

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* P.S. 63 is not a predominantly Black and Puerto Rican polling site. However, the testimony regarding the identification requirement at P.S. 63 included the testimony of Susan Mullgrav, who was required to furnish identification when she entered the polling site with a Black friend, while a White friend entering alone and approaching the same inspector was not required to furnish any written identification.

** The requirement of written identification was disputed in only one case. Mrs. Rubin, a witness for defendants, said that at P.S. 34 only those voters whose names were not on the computer list were asked for written identification. Mr. Carlotti, a witness for plaintiffs, testified that all voters were asked for written identification while he was there. This polling site has two election districts located at it, and thus the two poll watchers who testified may have been watching different voters and inspectors (R. 539, 540, P-12).

confusion at these polling sites and contributed to long lines of voters and delays in voting at these predominantly Black and Puerto Rican polling sites (R. 291, 293, 309, 419, 418, 613, 614).

23. There was specific testimony about a number of predominantly White polling sites where no written identification was required (R. 254, 302, 308, 413, 501).

24. Although the Assistant Attorney General who testified stated that it was his belief that the Election Law left it to the discretion of election inspectors whether to require written identification, it is clear from the Board of Elections' written instructions to inspectors for the School Board elections that documentary identification was not to be required (R. 627-28, P-9, D-M). In any event, since identification was in fact required only in minority areas and appears to have resulted in voters being turned away from the polls, the discriminatory nature and impact of the practice are clear.

25. In a departure from normal New York voting procedure, computer-printed lists of regularly registered voters were utilized at polling places in the School Board elections instead of the usual individual "buff cards". The use of these lists was authorized by statute after the New York Court of Appeals had held the proposed use of the lists to be unlawful (R. 119, Raimundi v. Board of Elections, 32 N.Y.2d 768, 344 N.Y.S.2d 957 (1973) Laws of New York 1973, Ch. 236 (adopted and effective April 30, 1973)).

26. The computer lists were compiled from the buff cards (or their white duplicates) and consequently carried forward any errors existing in the buff cards in addition to whatever errors arose in the transferral of information (R. 121, 723-24).

Testimony by a witness who had compared the buff cards with the computer list from one election district was to the effect that the computer list contained omissions or errors amounting to ten percent. Testimony from a poll watcher at J.H.S. 71, a polling site in a predominantly Black and Puerto Rican neighborhood, was that perhaps fifteen percent of the registered voters coming in to vote there were not on the computer list. Errors of spelling and alphabetization were found to be most likely in cases of Spanish or Chinese surnames because of the apparent similarity of names and their unfamiliarity to individuals not conversant in Spanish or Chinese (R. 120, 460, 534). Compounding the inaccuracies in the computer lists for election districts with Puerto Rican and Chinese voters, there was repeated testimony that election inspectors unfamiliar with Spanish and Chinese names encountered difficulty in locating the names on the lists (R. 297-98, 231, 315, 239-40, 241-43, 337-38).

27. The use of computer lists was further complicated by the failure of the Board of Elections to incorporate all eligible voters into one alphabetized computer list. Newly registered voters were placed in auxiliary alphabetized lists for each election district so that inspectors had to refer to more than one list to find registered voters. In predominantly Black and Puerto Rican voting areas the second list was often not used (R. 459, 184, 296-97, 653, 121). The majority of newly registered voters were Black and Puerto Rican in District One (R. 459, D-U).

28. There were many turned away from predominantly Black and Puerto Rican polling sites because their names were not found on computer lists (R. 309, 279, 175, 325, 296. 460, 240, 311-14, 231). In White voting areas there were very few voters turned

away because their names could not be found on the computer lists (R. 530, 307, 253-54, 504, 495).

29. In some of the polling sites of White voters along Grand Street, White voters whose names were not on the computer lists were permitted to vote without a court order. At P.S. 63 one White voter was permitted to vote without a court order although the voter's name did not appear on the computer lists (R. 122, 278).

30. There is a great deal of evidence of difficulties experienced in voting at the predominantly Black, Puerto Rican and Chinese polling sites resulting from the conduct of election inspectors, who are paid employees of the Board of Elections.

31. Although the normal complement of inspectors for each election district is four (Two members from each political party), it is undisputed that numerous election districts on May 1, 1973 were not fully staffed (R. 519, 415, 465, 628, 653). In some cases, this absence of inspectors delayed the opening of the polls, and in other cases it resulted in the curtailment of some of the functions normally performed by inspectors (R. 331, 519).

32. Irregular conduct on the part of inspectors at the minority polling places that was testified to is quite varied: one inspector was seen to open and examine ballots before depositing them in the ballot box (R. 178); inspectors permitted unauthorized persons to sit at the voting tables (R. 338); inspectors examined the ballots of White voters to make sure they were not marked with x's on checks (R. 254); inspectors gave many people incorrect information about where to go to vote (R. 312, 317, 333, 403, 520);

and inspectors gave voters incorrect information about how to mark the ballot (R. 480, 456, 477).

33. At least part of the responsibility for the irregular conduct of election inspectors rests with the Board of Elections. Although there was testimony that normally the Board of Elections provides training prior to elections for inspectors (R. 727), no such training was provided for the School Board elections (R. 197, 428-29, 675, 728). Because of the novelty of several procedures utilized in the School Board elections, especially the use of computer lists instead of the familiar buff cards and the novel bilingual aspects of the election, the lack of training appears to have been particularly unfortunate. Ironically, printed instructions for inspectors which were included in the packet of election materials sent to the polling sites by the Board of Elections inaccurately set forth directions for the use of buff cards rather than the computer lists which were actually utilized (D-M). In addition the multi-lingual instructions which had been laboriously prepared by the Board of Elections were not utilized by the inspectors as intended (R. 649-50, 490, 500).

34. Yet another factor contributing to the irregular performance of the election inspectors was the use of a Board of Elections manual entitled "Instructions to Inspectors of Elections for Primary Elections, Registration and General Election", at a number of the predominantly minority election districts on May 1, 1973 (P-10, R. 197, 437, 449-52). The manual does not apply to School Board elections and, perhaps more pernicious, is badly out of date but has not been superseded. As an example, it indicates a requirement that individuals be literate in English in order to vote (P-10, p. 19).

35. The Board of Elections failed to adequately prepare for the use of interpreters. Inspectors were not trained about the proper role of interpreters and in many instances prevented them from fulfilling their proper functions (R-455, 462, 175, 176, 247, 266, 273, 332, 522). Interpreters were not carefully selected or trained as to their proper function. This led to frequent complaints that interpreters were acting improperly or exceeding their functions (R. 632, 600, 602, 513, 529, 554-55). As a result, inspectors would feel forced to stop the legitimate activity of interpreters at great prejudice to Puerto Rican and Chinese voters (R. 601, 456, 266, 332).

36. Adequate training of personnel would have made a significant difference in the functioning of inspectors and interpreters (R. 675). The vote count went very smoothly, partially because of careful selection and intensive training of the count personnel (R. 675, 586-87, 567).

37. The Board of Elections prepared a card in English only designed to notify newly registered voters including parent voters of their polling place, in violation of the orders for multi-lingual voter materials in Lopez, supra (R. 655, 657, D-I).

UNEXPLAINED DECISIONS AND ACTIONS WITH A RACIALLY DISCRIMINATORY IMPACT

38. Between the general elections of November, 1972 and the School Board elections of May 1, 1973, the Board of Elections created eleven new election districts from existing districts in the 63rd Assembly District, which encompasses most of School District One. Voters in seven of these districts were assigned to

new polling places. The Board of Elections also changed the polling site of one district which was not renumbered, and redrew the lines between election districts in four instances, thus changing election district numbers of voters without affecting their polling sites. Virtually all of these changes of election districts and polling sites occurred in the predominantly Black, Puerto Rican and Chinese sections of District One. Election districts and polling sites in the White areas were unchanged (P-14, P-16, P-16a, P-16b, P-16c, R. 93, 94, 108, 110).

39. Although the Board of Elections sent notices to voters shortly before the election informing them of their election districts and their polling sites (R. 657), there is evidence that many voters either did not receive the notices or received them late (R. 220, 267, 95, 96, 426, 402). In any event, it is clear that many voters whose polling sites had been changed presented themselves at the wrong sites (R. 96, 402, 434, 435, 530, 219, 333). Because the changed election districts and polling sites were in predominantly Black, Puerto Rican and Chinese areas, the confusion over where to vote affected mostly these voters.

40. Compounding the confusion at the Black, Puerto Rican and Chinese voting sites created by voters presenting themselves at the wrong sites or the wrong election district tables, there was the complete absence at the polling sites of the information required to direct a voter to his proper voting location. A Board of Elections' employee testified that in order to locate a voter's proper polling place both a "street finder" or a map and a list of district polling sites is required. Neither of these documents was made available at polling sites on May 1, 1973 (R. 713-15, 112, 333). As a result, inspectors who tried to direct voters to new

polling sites often sent them on a prolonged and futile search for the proper poll (R. 312-14, 317, 333, 403, 520).

41. The placement of polling sites also had a racially discriminatory effect on the voters in the May 1 election. Six voting sites were placed in large, predominantly white middle-income housing projects. None were placed in the predominantly Black and Puerto Rican low income housing projects (R. 69, 73-79, P-14). This greatly facilitated the ease with which White residents could vote* (R. 76, 453, 306). While the turn-out for the District as a whole was 22.45%, the turn-out for the election districts located at polling sites within the middle-income housing was as high as 70%, 64%, 60%, 61%, 68%, 70% (P-5, P-14, D-H). Defendants made no attempt to demonstrate or explain the necessity for a distinction between middle and low-income housing projects as potential polling sites, or to explain why they chose sites which appear to favor White voters.

INTENTIONALLY DISCRIMINATORY CONDUCT

42. Although there is no evidence that the Board of Elections had any subjective intent to discriminate against Black, Puerto Rican and Chinese voters in the May 1, 1973 election in District One, there was testimony to apparently intentionally discriminatory actions by particular election inspectors.

43. Several witnesses testified that election inspectors were actively partisan for the UFT slate (R. 269-70, 407-10, 318).

* For this election, the discriminatory effect of the location of the polling sites may have been heightened by the fact that it rained heavily (R. 609), thus increasing the disadvantage to Black and Puerto Rican voters.

44. Several witnesses testified that particular inspectors were hostile and abusive to Black and Puerto Rican voters (R. 248, 256, 294, 297, 298, 466-67).

45. Chinese and Puerto Rican voters testified that they were instructed to mark their ballots in such a way as to render them invalid (R. 456, 477-78). The testimony of one Puerto Rican witness, Rosa Rivera, that she was instructed to mark her ballot with nine x's is supported by the testimony of another witness who was present at the counting of the ballots, and who testified that 44 out of 45 invalid ballots -- 22% of the total number of ballots cast in Mrs. Rivera's election district -- were disqualified because they were improperly marked with x's (R. 129-30, 744).*

46. A further instance of subjective racial discrimination was testified to by a White voter who was accompanied to vote by a Black friend. Both she and her friend were required to show written identification before being allowed to vote. Suspicious of this procedure, the voter, after leaving the voting place, located a White friend registered to vote in the same election district. She returned to the polling site with her friend and observed that her friend was not required to exhibit identification (R. 260-62).

47. Several of the incidents of inability to find voters' names when they were in the proper place on the computer lists are highly suspect (R. 315, 231).

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* Rosa Rivera's election district, where the high percentage of invalid ballots was cast, is the election district for residents of a low-income housing project, and thus the census tract figures showing the area to be 20-40% Black and Puerto Rican is an underrepresentation of the minority population of this election district (R. 71, 72, 745).

EXTENT OF THE DISCRIMINATION

48. While it is impossible to determine with any precision the numerical impact of the discriminatory conduct identified above, it was certainly not insubstantial. It is not unlikely that the cumulative effect of the various practices and actions described was to deprive at least several hundred Blacks, Puerto Ricans and Chinese of an opportunity to vote in the School Board election. The evidence of high registration -- both parent and regular -- for the election, a large Election Day turn-out, taken together with the large number of reports of long lines, confusion, unopen polls, missing voter names, voters presenting themselves at the wrong polling places and being turned away from polling places, amply justify the conclusion that large numbers of minority voters were prevented from voting (R. 113, 116, 174, 175, 177, 219, 229, 239, 240, 249, 261, 265, 268, 292, 294, 295, 309, 312-14, 316, 317, 323, 325, 330, 333, 337, 402, 416, 419, 424, 435, 447, 454, 459, 460, 468, 472, 473, 474, 483, 487, 512, 520, 530, 534, 536, 539, 540, 546, 552, 597, 598, 604, 653).

49. The School Board elections are conducted in accordance with the Hare system of proportional representation (R. 640). Voters indicate their preferences among candidates by assigning numbered choices. Because the voting is preferential and because of the way the count is made, it is impossible to know exactly how many additional votes might have changed the outcome of the election. The difference in votes between the candidate elected with the fewest votes and the candidate with the most votes not elected is 266, but because of the manner in which votes are canvassed -- and "surplus" votes shifted to a voter's next preference once his earlier preferred candidates are either elected or

eliminated -- makes it possible that fewer than 266 votes might have changed the election's outcome (R. 158-72).

CONCLUSIONS OF LAW

1. The plaintiffs allege, inter alia, violations by the defendants of rights protected by the Fourteenth and Fifteenth Amendments to the United States Constitution and the Federal Voting Rights Act of 1965 and the Voting Rights Amendments of 1970, 42 U.S.C. § 1971 et seq., as amended, Act of June 22, 1970, Pub. L. No. 91-285, 84 Stat. 315 (codified 42 U.S.C. § 1973 et seq). This Court has jurisdiction over such claims under 28 U.S.C. § 1343(3).

2. The nature of the claims made by the plaintiffs is such as to call forth the closest judicial scrutiny of defendants' actions. Plaintiffs allege the deprivation of a fundamental right -- the right to vote -- as a result of the most invidious type of discrimination -- that based on race. See Developments in the Law — Equal Protection, 82 Harv. L. Rev. 1065, 1124, 1127 (1969).

3. In our society the right to vote, as the basic means of participation in the political process, is regarded as fundamental. See, e.g. Dunn v. Blumstein, 405 U.S. 330, 336 (1972). Unjustified discrimination which results in unequal access to the electoral process undermines the legitimacy of representative government. Reynolds v. Sims, 377 U.S. 533, 555 (1964). An otherwise qualified voter has a constitutionally protected right to participate in elections on an equal basis with other individuals similarly situated and government must insure that "one man's vote . . . is to be worth as much as another's." Wesberry v. Sanders, 376 U.S. 1, 8 (1964). Infringements upon or restrictions of the right to vote are viewed suspiciously. Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Dunn v. Blumstein, supra.

4. Similarly, distinctions between individuals made by government on the basis of race are suspect and can only be justified by the demonstration of a compelling state interest for the distinction. Bolling v. Sharpe, 347 U.S. 497, 499 (1954); Korematsu v. United States, 323 U.S. 214, 216 (1944). At the heart of the Equal Protection clause of the Fourteenth Amendment is the prohibition of unjustified distinctions on the basis of race or national origin. Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 81 (1874); Ex parte Virginia, 100 U.S. 339, 344-45 (1880); McLaughlin v. Florida, 379 U.S. 184, 192 (1964). The Fourteenth Amendment was "unquestionably designed to condemn and forbid every distinction, however trifling, on account of race." Oregon v. Mitchell, 400 U.S. 112, 127 (1970).

Furthermore, the reach of the Fourteenth Amendment is not limited to statutory racial classifications but extends to invidious classifications which are "product[s] of discretionary administrative determination[s] made in good faith and not of a desire to circumvent the Equal Protection clause." Baker v. City of Petersburg, 400 F. 2d 294, 298 (5th Cir. 1968). See also Lombard v. State of Louisiana, 373 U.S. 267 (1963).

5. The Findings of Fact herein set forth three types of racial discrimination that operated in the May 1, 1973 School Board election in District One: intentional, subjective discrimination; election irregularities with a discriminatory impact; and conduct not irregular on its face but having a racially discriminatory impact and not justified or explained by the defendants. All three types of discrimination violate the Fourteenth Amendment.

6. The proposition that conscious racial classifications in the voting process, or purposeful discrimination among voters on the basis of race violates the Equal Protection clause is so well established as to hardly warrant the citation of authority. See e.g. Bell v. Southwell, 376 F. 2d 659 (5th Cir. 1967); U.S. v. Dogan, 314 F. 2d 767 (5th Cir. 1963); Anderson v. Martin, 375 U.S. 399 (1964). The conduct detailed in Paragraphs 42 through 47 of the Findings of Fact, supra, consciously directed at Black, Puerto Rican and Chinese voters, is obviously condemned by the Fourteenth Amendment.

7. But it is not only intentional discrimination which is unconstitutional. Election officials have a duty under the Fourteenth and Fifteenth Amendments and the Voting Rights Act of 1965 and its 1970 Amendments to refrain from engaging in conduct which results in any distinction or classification based upon race and to further refrain from applying or neglecting to apply any procedures resulting in deprivation or dilution of the franchise. Toney v. White, 348 F. Supp. 188, 195 (W.D. La. 1972); Brown v. Post, 279 F. Supp. 60 (W.D. La. 1968). Not only must election officials refrain from discriminatory action but they have an affirmative obligation, as agents of the State, to assure that its qualified electors cast a meaningful vote. Cf. U.S. v. Mississippi, 256 F. Supp. 344, 348 (S.D. Miss. 1966). The fact that irregularities that occur in the conduct of an election are not the result of a subjectively discriminatory intent is unimportant. It suffices that the impact of the irregularities is discriminatory to bring them into conflict with the Fourteenth Amendment. See also Kennedy Park Assn. v. City of Lackawanna,

436 F. 2d 108, 114 (2d Cir. 197) cert. den. 401 U.S. 1010 (1971); Hunter v. Erickson, 393 U.S. 385 (1969); Wright v. Council of the City of Emporia, 407 U.S. 451 (1972); U.S. v. Post, 297 F. Supp. 46, 51 (W.D. La. 1969).

8. The iregularities detailed in Paragraphs 16 through 37 of the Findings of Fact are of this type. Polls did not open on time; bi-lingual materials were not made readily available to voters; parent voter cards arrived at polls late, or not at all; computer lists of regular voters were inaccurate and difficult to use; documentary identification was required of voters in some election districts and not others;* a lack of training and insufficient and inaccurate instructions contributed to improper and/or ineffective performance of their duties by election inspectors and translators. While many of these irregularities can be attributed to human error, and few of them can be ascribed to a subjective intent to discriminate, the fact is that in District One they did discriminate. That is enough.

9. The cases of Toney v. White, supra, and Brown v. Post, supra, illustrate the principal. In Toney a registrar of voters failed to strictly comply with the statutory procedures relating to the purging of voters from registration rolls. This

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* New York Election Law § 225 (McKinney 1964) (Additional Supp. 1973) provides in pertinent part that an inspector may challenge any person appearing to vote whom the inspector "shall know or suspect not to be entitled to vote in the district." The inspector is thereafter required to administer a "preliminary" oath or "qualification" oath after the taking of which the individual may vote. Election Law § 225 (1), (4). There is neither a procedure, a requirement nor the authority for requiring the presentation of documentary identification bya prospective voter. Denying the right to vote by establishing an arbitrary criterionand its application based upon the race of a prospective voter is a violation of the 14th Amendment. See United States v. Dogan, 314 F. 2d 767 (5th Cir. 1965).

irregularity resulted in the disenfranchisement of a number of Black voters. The Court found that there was no calculated racially motivated purpose for the acts and omissions of the registrar and that in fact the registrar may not have been aware of the applicable provisions of law. Nevertheless, the failure to comply with everydetail of State law had "discriminated in fact in the administration of the voting process" and was held sufficient to void the election.

In Brown v. Post, supra, an election was set aside upon a finding that the court clerks, although not engaged in an intentional plan to deprive Blacks of their right to vote, had administered the absentee balloting procedures in a manner that was "discriminatory in fact."

10. Aside from conduct which was irregular and had a discriminatory impact on Black, Puerto Rican and Chinese voters, there were a number of decisions made and actions taken by defendants that although not shown to be irregular, did have a racially discriminatory impact and were not explained or justified by the defendants. Such conduct also runs afoul of the Equal Protection clause.

11. Creation of new election districts, and changes of election districts and polling sites prior to the May 1 election occurred almost exclusively in the minority areas of District One. Confusion and disenfranchisement of minority voters resulted from these actions. A number of polling sites in the White sections of the District were placed in large apartment houses, facilitating voting by their residents. This

was not done in the Black, Puerto Rican and Chinese areas of the District.

12. Seemingly neutral voting procedures offend the mandate of the Equal Protection clause when they adversely affect a minority group.* Gomillion v. Lightfoot, 364 U.S. 339 (196); U.S. v. Dogan, 314 F. 2d 767, 772 (1963), or an economically deprived group. Harper v. Virginia State Board of Elections, supra. Courts have frequently declared that governmental action which neither explicitly or implicitly is designed to discriminate against a racial group, but which causes a disproportionate burden upon a racial group is violative of equal protection. Castro v. Beecher, 459 F. 2d 725 (1st Cir. 1972); Chance v. Board of Examiners, 458 F. 2d 1167 (2nd Cir. 1972) (public employment discrimination); Hawkins v. Town of Shaw, Mississippi, 437 F. 2d 1286 (5th Cir. 1971) (provision of municipal services); Norwalk Core v. Norwalk Redevelopment Agency, 395 F. 2d 920 (2nd Cir. 1968), (administration of government programs). It is not necessary that the challenged governmental action falls exclusively upon a racial group. It is enough that the racial group bears a disproportionate share of the burden created by state action. Chance, supra, 458 F. 2d at 1176.

13. While there may exist explanations for the changes of election districts and polling sites in the minority areas,

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* The plaintiffs in this action are all recognized as members of identifiable racial and national origin minorities. Cf. Hernandez v. Texas, 347 U.S. 475 (1954). Moreover, plaintiffs do not lose the protection of the Constitution due to the fact that as a sum total they may represent almost 50% of the population in District One. "In the context of the Constitution's guarantee of equal protection, 'minority' does not have a merely numerical denotation; rather it refers to an identifiable and specially disadvantaged group." Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex. 1972) aff'd sub. nom. White v. Register, 41 U.S.L.W. 4885 (1973).

and not the White areas of District One, and for the location of polling sites in apartment buildings in the White areas and not in the minority areas, the defendants did not come forth with any explanations or justifications in the course of the hearing. Absent a very strong showing of justification these actions stand condemned because of their racially discriminatory impact.

14. Finally, any practices and procedures which hinder effective exercise of the franchise must be carefully examined in light of the historical denial of the vote to certain specially disadvantaged minorities.* A history of long continued exclusion is one element to consider in finding a pattern of prima facie discrimination. Graves v. Barnes, 343 F. Supp. 704, 728 (W.D. Tex. 1972), aff' sub. nom. White v. Register, 41 U.S.L.W. 4885, 4889 (1973). As stated in United States v. Duke, 332 F. 2d 759 (5th Cir. 1964) "[w]hile theoretically applicable to all, these new requirements primarily affect those who bore the brunt of previous discrimination and tend to maintain the position of advantage one class has already obtained over another". 332 F. 2d at 768.

15. Not only must the Court review the claim of racial discrimination within its historical context, but "[i]t would be both misleading and improper to ignore either the immediate setting or the broader atmosphere of fear and distrust in which the opposing groups were operating." Pride v. Community School Bd. of Brooklyn, Dist. #18, 482 F. 2d 257, 267 (2nd Cir. 1973).

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* Clearly, Puerto Rican, Blacks and Chinese voters were the beneficiaries of the Voting Rights Act of 1965 and the voting rights Amendments of 1970 which precluded, inter alia, literacy tests, a requirement of the ability to read and write English, and other techniques and devices designed to discriminate in the right to vote. See 42 U.S.C. (§§ 1973 aa(a), (c) and 1973b(3). The attempt of Congress was to assure that elections would no longer be conducted in a racially discriminatory manner. Oregon v. Mitchell, supra, 400 U.S. at 127, Katzenbach v. Morgan, 384 U.S. 641 (1966).

16. The impact of the various discriminatory actions and procedures at work in the District One School Board election taken cumulatively, was substantial. It is neither possible nor necessary to determine whether the outcome of the election would have been different had the discrimination not existed. The existence of substantial racial discrimination in the conduct of the election requires that it be set aside. U.S. v. Post, 297 F. Supp. 46 (W.D. La. 1969); Bell v. Southwell, 376 F. 2d 659 (5th Cir. 1967); Brown v. Post, 279 F. Supp. 60 (W.D. La. 1968).

17. Accordingly, judgment is hereby entered setting aside the School Board Election held in Community School District One on May 1, 1973. A special election shall be held and the parties are directed to submit proposals for the scheduling and conduct of the special election within ten days of the date of these Findings.

Dated: November 24, 1973. Respectfully submitted,

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POLLING SITE	ED	AD	% Blacks and Puerto Ricans per ED According to Census Figures	% Chinese and Spanish Surnamed Parent Voters per School *	Status of Change to ED
Center 294 Delancey Street	22	63	60 - 100 %		unchanged
Community Room 455 FDR Drive	4	63	0 - 20 % †		unchanged
	5	63	0 - 20 % †		unchanged
Community Room 475 FDR Drive	6	63	0 - 20 % †		unchanged
	7	63	0 - 20 % †		unchanged
Community Room 504 Grand Street	9	63	0 - 20 % †		unchanged
	10	63	0 - 20 % †		unchanged
Community Room 383 Grand Street	11	63	0 - 20 % †		unchanged
Community Room 77 Columbia	20	63	40 - 60 %[1]		unchanged
Community Room 170 Ave C	33	63	0 - 60 %		ED divided, creating new 57th ED. New 57th ED voters had polling site moved to PS 61.
Community Room 175 East 4 Street	41	63	0 - 20 % †		unchanged
	42	63	0 - 20 % †		unchanged
Emanuel Church 737 East 6 Street	30	63	60 - 100 %		ED divided, creating new 56th ED, with polling site at PS 64. Polling site for voters remaining in 30th ED moved from PS 34.
Settlement House 283 Rivington Street	21	63	60 - 100 %		ED line changed along border with 23rd ED, affecting change in polling site for some old 21st ED voters.
Seward Park Annex 200 Monroe Street	1	63	20 - 40 %		unchanged
	2	63	20 - 40 %		unchanged
	16	62	40 - 60 %		unchanged
Veterans Building 33 East 7 Street	39	64	0 - 20 %		unchanged
PS 2 112 Henry Street	158	62	40 - 60 %	Not a District One School	ED divided between School Districts 1 and 2
	138	62	40 - 60 %		ED divided between School Districts 1 and 2
PS 4 205 Rivington Street	19	63	40 - 60 %	91.95%	unchanged
PS 15 333 East 4 Street	26	63	60 - 100 %	89.35%	ED divided, with voters assigned to new 54th ED.
	54	63	60 - 100 %		Created from old 26th ED.
	55	63	40 - 100 %		ED created from old 29th ED, which resulted in change in polling site as well.
PS 19 185 First Avenue	45	63	20 - 40 %	76.18%	unchanged
	46	63	20 - 40 %		ED divided, with some old 46th ED voters assigned to new 60th ED.
	84	64	20 - 40 %		unchanged
	358	64	0 - 20 %		ED divided between School Districts 1 and 2.
	40	64	20 - 40 %		unchanged
	41	64	20 - 40 %		unchanged

† Virtually all white housing area.

[1] While Census tract for whole area shows 40 - 60 % Blacks and Puerto Ricans, this ED comprised mainly of a white middle income housing project area.

*The percentage of Parent Voters who are Chinese or Spanish surnamed was derived by counting the names on the parent cards which were at the polling sites. There was no accurate way to measure the number of Black parents who were registered as parent voters by a superficial examination of the cards alone, and thus the percentage does not reflect the number of Black parent voters. With the inclusion of Black parents, the percentage of racial minority voters would of course be increased.

POLLING SITE	ED	AD	% Blacks and Puerto Ricans per ED According to Census Figures	% Chinese and Spanish Surnamed Parent Voters per School	Status of Change to ED
PS 20 186 Essex Street	17	63	40 - 100 %	78.67 %	unchanged
PS 34 730 East 12 Street	31	63	60 - 100 %	88.95 %	Line redrawn between 31st and 32nd EDs.
	32	63	60 - 100 %		Line redrawn between 31st and 32nd EDs.
JHS 60 420 East 12 Street	36	63	40 - 60 %	87.39 %	ED divided, with voters assigned to new 58th ED at different polling site.
	43	63	40 - 60 %		unchanged
PS 61 610 East 12 Street	35	63	40 - 60 %	70.16 %	unchanged
	58	63	40 - 60 %		ED created from part of old 36th ED. Polling site moved from JHS 60.
	57	63	40 - 60 %		ED created from old 33rd and 34th EDs, with polling site for affected voters moved from 170 AVE C.
PS 63 121 East 3 Street	38	63	0 - 20 %	84.51 %	unchanged
	39	63	20 - 40 %		ED divided, with some voters assigned to new 59th ED.
	40	63	0 - 20 %		unchanged
	48	63	20 - 40 %		ED divided, with some voters assigned to new 51st ED at different polling site.
	59	63	20 - 40 %		ED created from old 39th ED.
PS 64 605 East 9 Street	34	63	40 - 60 %	91.57 %	ED line of old 34th ED redrawn, with some voters reassigned to 57th ED.
	66	63	60 - 100 %		ED created from old 30th ED with voters assigned to vote at PS 64 instead of PS 34 as before. Other 30th ED voters also reassigned to Emanuel Church from PS 34.
JHS 71 600 East 6 Street	27	63	60 - 100 %	83.13 %	ED line redrawn along border of 28th ED and along border of 18th ED.
	28	63	60 - 100 %		ED line redrawn along border with 27th ED.
	29	63	40 - 60 %		ED divided, with some voters assigned to new 55th ED and sent to new polling site.
	37	63	0 - 20 %		unchanged
PS 82 371 Madison	3	63	20 - 40 %	Special School	unchanged
PS 91 198 Forsyth Street	15	63	60 - 100 %	Special School	ED divided, with voters assigned to new 51st and 53rd EDs, and some reassigned to vote at PS 169.
	50	63	60 - 100 %		ED created from old 48th ED and polling site changed from PS 63.
	538	63	20 - 40 %		ED created from old 15th ED. Voters from this ED divided between School Districts 1 and 2.
PS 97 134 Mangin Street	23	63	60 - 100 %	81.03 %	ED lines between 23rd and 24th and 21st ED redrawn, and polling site affected by redrawn lines. Moved since November 1972.
PS 110 28 Cannon	8	63	0 - 20 %	56.52 %	unchanged
PS 122 150 First Avenue	44	63	20 - 60 %	85.68 %	unchanged
	47	63	0 - 20 %		unchanged
	60	63	0 - 20 %		ED created from old 46th ED. Polling site moved from PS 19.

POLLING SITE	ED	AD	% Blacks and Puerto Ricans per ED According to Census Figures	% Chinese and Spanish Surnamed Parent Voters per School	Status of Change to ED
PS 134 311 East Broadway	12	63	0 - 20 %	84.38 %	unchanged
	13	63	0 - 60 %		unchanged
PS 140 123 Ridge	18	63	40 - 60 %	83.58 %	Old 18th ED redrawn, with new 52nd ED created and some voters from old 27th ED assigned to new 18th ED, affecting their polling place location.
	52	63	40 - 60 %		ED created from old 18th ED.
PS 160 107 Suffolk	148	63	40 - 60 %	84.65 %	ED divided between School Districts 1 and 2.
	16	63	40 - 60 %		unchanged
PS 169 113 East 4 Street	49	63	0 - 40 %	Special School	unchanged
	51	63	20 - 40 %		ED created from old 15th ED, and polling site moved from PS 91.
	36	64	0 - 20 %		unchanged
	37	64	0 - 20 %		unchanged
	38	64	0 - 20 %		unchanged
	93	64	0 - 20 %		unchanged
PS 188 131 Lewis	24	63	60 - 100 %	86.49 %	ED lines redrawn between 23rd and 24th ED. Some old 24th ED voters thus reassigned to vote at PS 97.
	25	63	60 - 100 %		unchanged

SUMMARY

Of the 15 EDs for areas with a Black and Puerto Rican population of 60 - 100 %, 13 were changed in some way between November, 1972 and May, 1973.

Of the 22 EDs for areas with a Black and Puerto Rican population of 0 - 20 %, only 2 were changed in any way between November, 1972 and May, 1973. One of the two was an ED which was divided between School Districts One and Two.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

----------x

73 Civ. 3983

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action having been tried upon the facts by the Court without a jury, the Court does hereby find the facts and states separately its conclusions of law thereon, and directs the entry of the appropriate judgment, as follows:

FINDINGS OF FACT

1. Plaintiffs have commenced this action in their own behalf and on behalf of all others similarly situated who compose a class of all Spanish surnames (Hispanic), Black and Chinese voters in the City of New York.

2. A motion for Preliminary Injunction was filed for an order enjoining defendants, Board of Education of The City of New York and Community School Board of School District One from abolishing any positions or job classifications in Community School District One that were in existence in the 1972-1973 school year and from taking any other irreversible actions.

3. A hearing on the Preliminary Injunction was ordered and upon stipulation of the parties and with the consent of the Court, it was agreed that the determination on the Preliminary Injunction be the final judgment of the Court in this action.

4. An election for members of the Community School Board in Community School District One was held, along with similar elections for 31 other school boards in the City of New York on May 1, 1973. This election was held by a method of election known as Proportional Representation.

5. Every duly registered voter was eligible to vote in this election as well as every parent who had a child attending an elementary or junior high school in a community school district.

6. The evidence indicates that great efforts were made to enroll as many parent-voters as could be obtained. These efforts were made by the Board of Education, The Board of Elections and the members of the various communities involved in the election.

7. Pursuant to an order of this Court in Lopez v. Dinkins, The Board of Elections and The Board of Education provided bilingual interpreters in both Spanish and Chinese in those election districts where the census tract population of these ethnics exceeded 5 Percent and printed the instructions on each ballot in Spanish as well as in English.

8. Over 12,500 persons in District One voted, this number being about double the number who voted in the prior school board elections in District One and was the second highest percentage of registered voters who voted in any district in the City.

9. Testimony reveals that during the course of the election there were a number of irregularities. However, such irregularities occurred to all classes of voters whether they were Hispanic, Black, Chinese or White, equally, as well as in all of the school districts throughout the City of New York.

10. Testimony further reveals that many of the irregularities were caused by the over enthusiasm of the supporters of both factions in the election.

11. The Board of Education jointly with the Board of Elections made special efforts to provide information and assistance to assure the largest possible turn-out of voters by providing special adverting in multi-lingual media, by preparing and distributing bilingual materials for the filing of petitions of candidates, registration of voters and instructions to voters in how to vote in a Proportional Representation election. Each voter was advised in both English and in Spanish of the election district where he was to vote and the location of the polling place in said election district prior to the date of election.

12. Plaintiffs have failed to produce any credible evidence of racial discrimination in the conduct of the election in District One.

CONCLUSIONS OF LAW

1. Mere irregularities in an election, without a clear and unequivocal showing of racial discrimination is insufficient to invoke the jurisdiction of the Federal Courts.

2. Even, showing some evidences of racial discrimination it was insufficient to annul a completed election.

ORDER AND DECREE

Pursuant to the Findings of Fact and Conclusions of Law entered this date it is ordered, adjudged and directed that plaintiffs' action be dismissed.

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U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

STIPULATION

73 Civ. 3983 (CES)

Counsel for the parties to this action, on behalf of their respective clients, hereby stipulate and agree that the annexed table contains an accurate characterization of the race or national origin of all of the witnesses called in the course of the trial of this action and of the various candidates for the school board of Community School District One who ran in the May 1, 1973 election and said annexed table shall, and hereby is, made a part of the record in this action.

Dated: November 28, 1973

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New York, New York 10022

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ERIC SCHNAPPER
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IRA BEZOZA
Counsel for Plaintiffs

By: _____
Fredrick E. Sherman

NORMAN REDLICH
Corporation Counsel of the
City of New York

By: _____

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PLAINTIFF WITNESSES

Judith Baumann (W)
Duncan Whiteside (W)
Willa Kramer (B)
Ada Garcia (PR)
Gloria Golpi (PR)
Elena Diaz (PR)
Helen Weinstein (W)
Peter Mullgrav (W)
Emilio Jose Morante (PR)
William Caputi (W)
Thomas McCann (W)
Hilda Morales (PR)
Arturo Santiago (PR)
Victor Gonzalez (PR)
Frederic Gaumer (W)
Maria Medina (PR)
Pard Chan (PR & C)
Anna Rockitter (W)
Nicomedes Sanchez (PR)
Gloria Maria Ortiz (PR)
Mirian Rios (PR)
Suet Fong Ng (C)
Lee Ching Chan (C)
Ethel Lobman (W)
Yuk Ching Lum (C)
Louise Elaine Armstrong (W)
Armin Ruiz (PR)
Petra Santiago (PR)
Luz Martinez (PR)
Fran Barrett (W)

DEFENDANT WITNESSES

Ray Frankel (W)
Evelyn Sansolo (W)
Edward Blume (W)
Natalie Schutzer (W)
Abraham Levine (W)
Tony Gennaro (W)
Sharon Dunenberg (W)
Rita Rubin (W)
Marilyn Ruda (W)
Emily Arroyo (PR)
Archibald Robertson (W)
Joseph Fristachi (W)
Shelvy Young (B)
Paul Greenberg (W)
Martha Lugo (PR)
Rafela Rodriquez (PR)
Myrta Acevedo (PR)
Carmen Sameday (PR)
Evelyn Yatkowitz (W)
Joseph Frost (W)

COALITION SLATE CANDIDATES

Eric Snyder (W) - not on ballot
Frank Suarez (PR)
Georgina Hoggard (PR)*
Jane Tam (C)
Lyle Brown (B)*
Bertram Beck (W)
Henry Ramos (PR)*
Pedro Cordero (PR)

COMMITTEE FOR EFFECTIVE EDUCATION SLATE CANDIDATES

Adolph Roher (W)*
Carolyn Kozlowsky (W)*
Jerome Goodman (W)*
Jeanette Marconi (W)
Richard Price (W)*
Donald Brown (B)*
Freeman Stillings (W)
Martin Schiff (W)
Saul Mildworm (W)*

INDEPENDENT CANDIDATES

Muriel Norgrove (B)
Eugenio Matta (PR)
Jeanne Jackson (C)

* = elected

W = White
B = Black

C = Chinese
PR = Puerto Rican

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 Civil 3983

- x

APPEARANCES:

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New York City
Attorneys for the Plaintiffs.

NORMAN REDLICH, ESQ.,
Corporation Counsel, New York City
By IRWIN L. HERZOG, ESQ.,
DORON GOPSTEIN, ESQ.,
Attorneys for the defendants New York City Board of Elections, New York City Board of Education, and Community School Board, District One; and
JOSEPH SLAVIN, ESQ.,
Attorney for the defendant Kings County Democratic Committee.

O P I N I O N

STEWART, DISTRICT JUDGE:

The plaintiffs are predominantly black, Puerto Rican[1/] and Chinese residents of Community School District One in Man-

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1/ This term encompasses all persons of Hispanic heritage, the large majority of whom are Puerto Rican in District One.

hattan ("District One") and the Coalition for Education in District One, an unincorporated association of parents, teachers and community residents. They bring this action challenging the legality of the May 1, 1973 election of members to the District One school board, claiming that numerous actions and omissions of the defendants resulted in the election being held in a racially discriminatory manner. The defendants are principally the members, employees and agents of the New York City Board of Education and Board of Elections.[2/] The plaintiffs seek a judgment declaring the May 1 election invalid and ordering a new school board election in District One.[3/]

The defendants, while admitting that certain irregularities occurred in the May 1 election, contend that positive steps were taken to encourage minority participation in this election; that there were no more irregularities than caused by usual human fallibility in all elections; that the irregularities were in no way discriminatory; and that, even if some discrimination was shown, it was not sufficient to set aside an otherwise valid election.

2/ The remaining defendants are the various New York City Democratic and Republican county committees and their respective chairmen, and six members of the current District One school board.

3/ Plaintiffs' complaint also challenges the selection and performance of election inspectors who serve during each election throughout New York City. The District One controversy, originally brought on by an Order to Show Cause for a Preliminary Injunction, became a separate matter, and is the only issue currently before this Court for decision. The city-wide challenge to the system of selecting election inspectors remains pending. The class action aspects of the lawsuit have also yet to be determined, and need not be at this time.

This matter originally reached the hearing stage on a motion for a preliminary injunction to enjoin certain actions of the allegedly illegally elected school board. At the conclusion of an extensive evidentiary hearing, which continued for eight days and at which numerous exhibits were introduced, the parties stipulated, and it was so ordered, that the hearing should constitute a full hearing on the merits of the plaintiffs' claim as to the election.

We are therefore faced with two questions:

1) Was the May 1 election conducted generally in a manner which either demonstrated a racially discriminatory purpose by the defendants and their agents or which resulted in a racially discriminatory impact on the voting rights of black, Puerto Rican and Chinese voters and any potential voters, 4/ and therefore illegal?

2) If so, is a new election a necessary and proper remedy?

Prior to the May 1 election, a group representing Puerto Rican and Chinese voters city-wide, some of whom are also plaintiffs in this case, brought suit to secure their rights to multilingual school board elections. Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. 1973). Various orders were stipulated to regarding a multilingual pre-election nomination process. On

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4/ Black, Puerto Rican and Chinese voters and potential voters are also collectively referred to hereinafter as "minority voters".

March 21, 1973, this Court issued an Order concerning the May 1 election requiring the defendants, who are essentially the same as in this case, to:

1. prepare ballots with instructions in Spanish as well as English;

2. prepare and distribute sample ballot placards with instructions in Spanish and Chinese as well as English;

3. prepare and distribute separate instruction sheets in Spanish and Chinese, as well as English;

4. provide at least one person who was bilingual in English and Spanish or English and Chinese to act as an interpreter at each school polling site where there were, respectively, more than 5% Puerto Rican or more than 5% Chinese students enrolled.[5/]

5. inform Spanish-speaking and Chinese-speaking voters of all forms of bilingual assistance available.

This Order, which was reached through negotiation by the parties, was not appealed.

Plaintiffs in this case contend that neither the letter nor the spirit of the Lopez Order was complied with on May 1, 1973, and that the failures to comply were among the numerous failures

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5/ This Court rejected a proposal by one of the defendants in Lopez to amend the March 21 Order to include a provision that the person offering bilingual assistance at the polling site do so only "upon request".

by the defendants which resulted in a discriminatory election.

Defendants contend that in addition to complying fully, they went beyond the letter of the Lopez Order, to which they had essentially stipulated, and provided language assistance in other languages in addition to Spanish and Chinese.

In September, 1973 another group allegedly representing Puerto Rican voters city-wide came before this Court to secure bilingual assistance for the general elections of November 6, 1973 and all future elections. Torres v. Sachs, 73 Civ. 3921 (S.D.N.Y. 1973). Concluding that "[t]he conduct of an election in English only violates plaintiffs' rights under the Voting Rights Act of 1965, 42 U.S.C. §1973 et seq. and the Voting Rights Amendments of 1970, 42 U.S.C. §1973aa et seq., which enforce the Fourteenth Amendment to the Constitution of the United States and the Civil Rights Act of 1871, 42 U.S.C. §1983," this Court signed an Order on September 26, 1973 granting plaintiffs a preliminary injunction guaranteeing for the November 6 election to all Puerto Rican voters in New York City essentially the same language assistance which Puerto Ricans and Chinese had been granted for the school board elections earlier this year. The provision for interpreters' assistance at the polls was spelled out in greater detail than in the Lopez Order:

> Said translators [Spanish and English speaking persons] shall be permitted to approach Spanish speaking voters for the purpose of offering assistance and shall be permitted to go behind the guard-rails for purposes of providing assistance.

This Order which was also reached through negotiation by the parties, was not appealed. The question of bilingual assistance for all future elections is pending before this Court on the Torres plaintiffs' motion for summary judgment. 6/

6/ To complete the picture as to related litigation: this Court's September 26 Order apparently prompted the United States Department of Justice to move to reopen a declaratory judgment exempting Bronx, Kings and New York (Manhattan) counties from Section 4(a) of the Voting Rights Act of 1965, as amended in 1970, 42 U.S.C. §1973b(a),(b), alleging that the "English only requirement" was a "test or device" within Section 4(c) of the Act, 42 U.S.C. §1973b(c), which "has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color of Spanish speaking citizens living in New York City". This motion to reopen was granted by a three-judge court of the District of Colombia Circuit on November 5, 1973. On January 4, 1974, that Court ruled from the bench that the three New York City counties were not exempt from Section 4(a) of the Voting Rights Act.

A related matter, Velez v. Cunningham, 73 Civ. 2666, a class action seeking general relief with regard to election inspectors in New York City similar to that sought by the plaintiffs at bar (see note 3 supra) has also been filed with this Court.

Findings of Fact

I. Background: May 1 election.

Pursuant to New York Education Law §2590-c, each of the thirty-two community school districts in New York City is governed by an elected board. Elections were held throughout the city for positions on each of the boards for the first time in 1970, and then again on May 1, 1973.

Procedures for New York City school board elections in general, and the May 1 school board election in particular, are different from regular New York City election procedures in at least three substantial ways.

First, in school board elections, there are two categories of eligible voters: all regularly registered voters, plus parents of public school children (hereinafter referred to as "parent voters").[7/] Parents who are not regularly registered voters must register specially, and regularly registered voters living outside a particular school district, but having children in that district's schools, must register specially as parent voters in order to vote in the school board election for the district in which their children attend school. Since each voter is entitled to

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7/ Such parents must be citizens of New York State, but not necessarily of the United States, over eighteen years of age, and New York City residents for at least thirty days. New York Education Law §2590-c(3) (McKinney's 1973-74 Supp.).

only one vote, a voter who is regularly registered and lives within the boundaries of one school district, but who has a child attending public school in another district, may elect to vote in one, but only one, of the two districts.

Second, while regular elections are conducted using voter registration "buff cards" which enable inspectors to compare the signature of the voter at the poll with the signature of the person who originally registered, the May 1 school board election was not conducted in this fashion. For some reason which does not appear on the record, computer print-out sheets bearing the names and addresses of the voters were, in the case of regularly registered voters, used in place of buff cards.[8/] Thus, on May 1, inspectors were not able to authenticate regularly registered voters' signatures at the polls. Also for an unexplained reason, buff cards similar to those used in regular elections were used on May 1 for parent voters.

8/ A twelfth-hour ruling by the New York Court of Appeals on April 27, 1973 held that a state statute required that buff cards be used in the school board elections. Raimundi v. Board of Elections, 32 N.Y. 2d 768, 344 N.Y.S. 2d 957 (1973). However, on the day before the elections, the Board of Elections was authorized by legislative amendment to go forward as planned with the use of the computer print-outs. Laws of New York 1973, Ch. 236 (adopted and effective April 30, 1973).

Contrary to defendants' contention, the New York Supreme Court did not subsequently rule the use of the computer print-outs to be constitutional in Aponte v. Board of Elections (Sup. Ct. Kings County, Special Term, Part I, May 16, 1973). The court found that the plaintiffs lacked standing to sue, and concluded: "...the merits of the constitutional issue cannot be reviewed (citations omitted)."

Finally, the school board elections, unlike others, are conducted under a system of proportional representation. While this system is meant to increase minority representation while guaranteeing majority control, it has at least two other ramifications for this case. First, it complicates the balloting process. Voters may vote for one or more candidates up to the number of vacant seats on the board, but in some manner they must express a preference. The instructions call for the placing of numbers next to the name of each candidate voted for in order of preference, e.g., one for the voter's first preference, two for his next preference, and so on. Thus, for example, a ballot containing "X" marks next to the names of each of nine candidates (the number of seats vacant on the District One board) would be an invalid ballot, since the voter failed to show a preference. While this system is not so complex as to be unexplainable under ordinary circumstances, in an election where there are an unusual number of uninitiated voters, many of whom speak, read or understand little or no English. this balloting process is quite likely to create confusion, if instructions are not clear, consistent, and multilingual.

Secondly, the tabulation of ballots under a proportional representation system makes it impossible for the Court to determine the number of additional or amended ballots necessary to change the outcome of the election. Ballots are counted in random order, and each voter's first preference is noted. On the basis of this first count, candidates having

received enough votes mathematically to guarantee their victory are declared victorious. (The number of votes so required is referred to as "quota".) In District One on May 1, a candidate receiving 1260 first place votes on the first count was deemed to have reached quota and therefore to have won. After a candidate reaches quota on this first count, any subsequent ballots which indicated a first preference for that candidate are redistributed and counted for the voter's second indicated preference. Exactly which ballots are so redistributed is determined by the random order of count, determined by lot. Next, the candidate with the lowest number of first-place votes is deemed to have lost, and ballots on which he is the first preference are redistributed to the second indicated preference on each ballot. This process is repeated until such time as there remain only as many candidates as seats to be won.[9/]

Thus, while the difference between the candidates who finished ninth and tenth in the balloting, after all of the redistribution, was 266 votes,[10/] it is impossible to know

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9/ For a more detailed explanation, see Campbell v. Bd. of Education, 310 F. Supp. 94, 98-99 (E.D.N.Y. 1970), a case in which this tabulation system itself was challenged.

10/ Candidate Beck finished tenth, and was thus the losing candidate who received the most votes. At the last count, he had 994 votes, or 266 votes short of quota.

the significance of that figure. It is quite possible that a change in the outcome of the election would have resulted if, after the first count, an additional or different one or two candidates had reached quota, and thus had their surplus ballots redistributed to the second preference indicated. On this theory, somewhere between 108 or 143 changed or additional ballots could very well have changed the outcome.[11/] It is most likely that the exact figure which indicates the number of changed or amended ballots necessary to change the outcome of the election lies somewhere between 108 and 266. All this Court can do at this time, in determining whether the outcome of the elections could possibly have been affected by discrimination, is to indicate the order of magnitude with which we are concerned.

II. Background: District One.

District One is located on the Lower East Side of Manhattan, bounded on the North by East 14th Street, on the East and South by the East River, and on the West by Fourth Avenue and the Bowery in the northern half and Clinton and Rutgers Streets and Pike Slip in the southern half.

11/ Candidates L. Brown and Hoggard finished 108 and 143 votes from quota, respectively, on the first count. As a result, although they were elected after redistribution, ballots on which they were the first preference were not redistributed.

Census figures indicate that approximately 41.4% of the residents of District One are black or Puerto Rican, but that this percentage is not uniform in each neighborhood of the District. Some neighborhoods are virtually all white, such as the Grand Street area which contains several middle-income cooperatives, and the middle-income housing development along First Avenue between East 3rd and East 6th Streets. Other areas are virtually all black or Puerto Rican, in particular the area east of Avenue B, from Houston to East 14th Streets. Because of this disparity in the racial composition of neighborhoods, some of the thirty-three polling sites used on May 1 serviced predominantly white voters, while other sites serviced predominantly black or Puerto Rican voters. A table listing the District One polling sites on May 1 and providing census data on the racial makeup of the election districts located at each site as well as other data discussed below is set forth in an appendix to this opinion.[12/]

The school population in District One has a much higher proportion of minority members than the resident population. Over 92% of the children attending District One

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12/ This appendix is plaintiffs' Exhibit 14, which is a composite of plaintiffs' Exhibits 16, 16A, 16B and 16C. The facts contained therein were not disputed by the defendants.

schools are black, Puerto Rican, Oriental or American Indian.[13] Because the proportion of minority members in District One's school population is much higher than the proportion of minority members in District One's resident population,[14] the proportion of minority members among District One's parent voters is significantly higher than the proportion of minority members among District One's regularly registered voters.[15]

13/ See plaintiffs' Exhibit 1:

	#	%
Black	2,538	14.8
Puerto Rican (all Hispanics)	12,393	72.4
Oriental	926	5.4
American Indian	16	0.1
Total Minority Student Population	15,873	92.7
Total Student Population	17,120	

14/ As the resident population figures do not contain breakdowns for Orientals or American Indians, for comparison purposes, these two groups should be discounted from the school population figures. The percentage of blacks and Puerto Ricans in the school population is still twice as great as the percentage of blacks and Puerto Ricans in the resident population, 87.2% compared to 41.4%.

15/ This is corroborated in part by the fact that almost 80% of the parent voters registered in District One had Spanish or Chinese surnames. Of course, a check of the surnames of registered parent voters could not reveal the number of additional black parent voters.

Many of the Puerto Rican and Chinese residents of District One speak, read or understand little or no English.

The May 1 school board elections in District One spurred a great deal of community interest, concern and participation. The rate of pre-election registration, including parent registration, was very high and the proportion of voter turnout on election day was more than twice the city-wide average.

Although slates of candidates were not officially sanctioned nor slate affiliations listed on the ballots, there were in fact two slates, one comprised of eight, the other of nine candidates, plus three candidates without slate affiliation, running for the nine seats on the District One board.[16/] One slate, sponsored by the plaintiff, Coalition for Education in District One, was comprised of the incumbent school board, most of whom were Puerto Rican, black and Chinese, and was recognized in the community to represent the policies of the incumbent board concerning bilingual education and parent and community involvement in the schools.[17/] The

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16/ This fact is clearly indicated by campaign organization and literature as well as by the common perception of community residents reflected in the testimony.

17/ This was reflected in the testimony of William Carlotti, a witness we find totally forthright and credible.

opposition slate was sponsored by a group called the Committee for Effective Education and supported, financially and otherwise, by the United Federation of Teachers. It consisted of eight white candidates, and one black. The election was bitterly contested between these two groups, and this struggle contained serious racial and ethnic overtones.

Prior to May 1, all parties also had a high degree of awareness of, and concern over, potential difficulties in conducting the school board elections in a manner which allowed full participation of minority voters, especially newly-enfranchised parent voters. In addition to the lawsuits discussed above, meetings were held between various interested community groups and officials of the Board of Elections at which numerous proposals were made. In response to the various expressions of concern, the Board of Elections took certain steps which went beyond those compelled by the Lopez Order in some respects in an attempt to allow full minority participation in the May 1 election. For example, instructions were prepared in several languages in addition to those compelled by the Order. The election was publicized through the "ethnic media". A special deputy registrar system expanded opportunities for the registration of parent voters.

III. Conduct of the May 1 Election.

Despite these efforts, there was tremendous confusion and a large incidence of irregularities at certain polling places in District One on election day. The totality of the evidence adduced at trial compels this Court to find that the May 1, 1973 District One school board election was conducted in a manner which had a substantial discriminatory impact on black, Puerto Rican and Chinese voters and potential voters. This racially discriminatory impact resulted from essentially two types of conduct: a) that which was a departure from statutes or established administrative procedures and had a discriminatory impact on minority voters and b) conduct which was not on its face illegal or irregular, but which had a discriminatory impact on minority voters, and which was not explained or justified by the defendants. In addition, there were incidents of intentional racial discrimination by employees or agents of the defendants. These incidents merely compounded the racially discriminatory impact which resulted from the general practices and procedures employed in the election.

Generally, the racially discriminatory impact was demonstrated at the hearing by evidence of irregular practices at polling sites servicing predominantly minority voters, or by actual disparate treatment accorded minority, as compared to white, voters.

In totality, conduct which had a racially discriminatory impact affected several hundred votes, which could have altered the outcome of the election.

A. Conduct which was irregular or illegal and had a discriminatory impact can be broken down into four categories: 1) the absence or late arrival of election materials (including bilingual materials) or inspectors at polling sites servicing predominantly minority voters; 2) the unfair and inconsistent treatment of parent voters, the great majority of whom were black, Puerto Rican or Chinese; 3) inconsistent policy with respect to requirement of identification which caused delays and denial of voting rights at polling sites servicing predominantly minority voters and other irregularities caused by the use of computer print-outs; 4) inadequate instruction of inspectors and interpreters, which adversely affected those voters who could speak, read or understand little or no English.

1. Absence or late arrival of materials.

All polls were supposed to be opened from 6:00 A.M. through 9:00 P.M. on May 1. However, several polls servicing predominantly minority voters opened substantially later than 6:00 A.M. This was caused by the late arrival either of the voting materials, including ballots or ballot boxes, or

of the full complement of inspectors.[18] As examples, at P.S. 61 and P.S. 160, which service predominantly minority voters, the polls opened between 1 1/2 and 2 hours late due to the absence of the full complement of inspectors. At P.S. 63, parent voters were prevented from voting until after 9:00 A.M. because of the absence of the parent voters book.[19]

Perhaps the most serious denials of the right to vote occurred at J.H.S. 71 and the Emmanuel Presbyterian Church. At J.H.S. 71, parent voter materials did not arrive at all, and all eighty-three registered parent voters (of whom 83% were Spanish- or Chinese-surnamed) did not have the opportunity to vote. At Emmanuel Church, no voting materials arrived and thus no voting took place, until after 12:30 P.M. This polling site services minority voters almost exclusively, and there was testimony that of the twenty-five or more voters who appeared in the morning to vote, and could not, almost all of them were Puerto Rican or black.[20] In sum, the evidence concerning missing materials

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18/ Although the school board elections were by law non-partisan, there was a great deal of testimony that the opening of certain polls was delayed until an equal number of Republican and Democratic inspectors were present.

19/ Over 84% of the parent voters registered to vote at P.S. 63 were Spanish- or Chinese-surnamed.

20/ The Board of Elections, when listing the polling sites for representatives of the State Attorney General's office, one of the many overseers of the election, failed to indicate that voting was to occur at Emmanuel Church.

or inspectors and resulting delays in the opening of polls related almost exclusively to polls servicing minority voters, and makes clear that many of these voters were denied the opportunity to vote by these practices.

Polling sites servicing predominantly white voters (e.g., 455 F.D.R. Drive) did not experience delays due to absence of materials or inspectors.

In addition, bilingual materials were not always readily available at the polls. Each ballot did contain instructions in Spanish, and the Board of Elections did mail out instruction sheets to each voter in Spanish as well as English. However, distribution on election day of "sample ballot placards" and "separate instruction sheets" in Spanish, Chinese and English, as required by the Lopez Order, in a manner in which the voters could be assisted thereby, was spotty at best. The effect of the absence of such materials would obviously be greatest on voters who spoke, read or understood little or no English.

2. Unfair and inconsistent treatment of parent voters.

In addition to the aforementioned denial of voting rights to parent voters resulting from the fact that parent voter books arrived late or not at all at P.S. 63 and J.H.S. 71, supra p. 18, the Executive Assistant State Attorney General, in charge of overseeing the election for state authorities, called by the defendants, also testified to the late arrival of parent voter

books at P.S. 20 and J.H.S. 60 and possibly other polling sites.

There was also much confusion with regard to where parent voters had to vote, both as to which polling site, and which election district or table within each polling site.[21/] While many parent voters were under the impression that their correct polling site was the school their child attended, not all District One schools served as polling sites on May 1 (e.g., J.H.S. 22, J.H.S. 56[22/]). Further, several parents of District One school children were improperly instructed to vote for District Two candidates at a school which contained polls for both districts.

This confusion undoubtedly denied some parent voters the right to an effective vote. We reiterate that the overwhelming majority of parent voters were Puerto Rican, black and Chinese, supra, p. 13.

3. Inconsistent policy on identification and other irregularities caused by use of computer print-outs.

The use of computer print-outs instead of buff cards created a great dilemma for election inspectors. While

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21/ Such confusion is understandable since the Board of Elections issued two sets of instructions to election inspectors, which contained conflicting instructions as to parent voters (see n. 29 infra).

22/ The percentage of parent registrants from these two schools who reached their correct polling site and actually voted on May 1 was well below the average percentage of parent registrants from other schools who voted. At J.H.S. 56, this affected a parent registrant population that was 81% Spanish- and Chinese-surnamed.

formerly an inspector could verify the identity of a potential voter by comparing the buff card signature with the signature of the person appearing at the polls, use of the print-outs prevented this procedure. The Board of Elections did not establish nor inform its inspectors of any uniform policy with respect to verifying identification of voters on May 1.[23] As a result, inspectors at some election districts (E.D.'s) required written identification of voters before allowing them to vote, some required specific items of identification, others required no identification. At some E.D.s where inspectors required written identification, the failure to produce any written identification or such identification as was deemed satisfactory by the particular inspector, resulted in the denial of the right to vote even where the names and addresses were found on the computer list. In addition, the process of requiring documentary identification and determining its sufficiency added to the confusion and lengthened the lines.

At E.D.s where such identification was required, it was generally required of all voters, regardless of race or ethnicity.[24] However, with one exception, the polling sites at which it was required were only those which serviced

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23/ In fact, one of the two instruction sheets sent by the Board of Elections to inspectors for May 1, 1973 refers only to buff cards and makes no reference at all to computer print-outs. Neither instruction sheet (Defendants' Exhibits J, M) provides for any documentary identification requirement. Nor have the defendants cited any statutory authority for the documentary identification requirement.

24/ But see n. 25 infra.

predominantly minority voters (e.g., P.S. 34, P.S. 61, P.S. 160, Emmanuel Church).[25] For example, at P.S. 61, many black and Puerto Rican voters who were in fact on the computer lists were turned away for failure to produce sufficient identification. At a number of sites servicing predominantly white voters no identification was required. Therefore, in District One as a whole, the effect of the failure to institute a uniform policy with respect to identification had a discriminatory impact on minority voters.

The use of computer lists created several other irregularities, two types of which had a racially discriminatory impact.[26] In certain election districts in which the populace was predominantly white, certain persons whose names did not appear on the print-out but whose names were known to the inspector, were allowed to vote, and a notation to this effect was made on the print-out. In other E.D.s, compliance with the rule that a voter's name had to appear on the print-out (or a court order obtained) in order to be enabled to vote was more strictly observed.

25/ The exception was P.S. 63, which is not a site servicing predominantly minority voters. However, there was testimony that the identification requirement at P.S. 63 was not administered evenly as between white and minority voters.

26/ An example of an irregularity which did not have a demonstrably greater impact on minority voters than on white voters was the high number of errors estimated (10-15%) in transfering information from the buff cards to the computer print-out.

Also, the alphabetized print-outs created a problem for many inspectors because of their unfamiliarity with Spanish and Chinese names. In fact, this problem was not limited to the print-out of regularly registered voters, but was also present with respect to the alphabetized buff cards for parent voters. Spanish and especially Chinese voters' names were often incorrectly alphabetized, sometimes because the clerical employee's unfamiliarity with such names led to their being inverted or lost among several names which were similar.[27/] This caused substantial delays at polling sites at which these voters appeared, and in some cases, denial of voting rights.

Taken alone, these last two irregularities may not have affected the voting rights of a substantial number of minority, as opposed to white, voters. However, they cannot be taken alone; they must be tallied up with all of the other irregular practices.

4. Inadequately instructed inspectors and interpreters.

The testimony is replete with incidents of difficulties experienced in voting at polls servicing predominantly minority voters resulting from conduct of election inspectors,

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27/ This phenomenon was graphically illustrated at the hearing. On direct examination, Mrs. Yatkowitz, a Board of Elections employee, failed to find a parent voter card of one Lee Ching Chan from among the parent cards for P.S. 63. Her testimony was designed to rebut Miss Chan's earlier testimony concerning the difficulty she experienced on election day. Instead, Miss Chan's testimony was corroborated when, on cross-examination of Mrs. Yatkowitz, it was pointed out that Miss Chan's parent card was in fact among the group first shown to Mrs. Yatkowitz, and that Mrs. Yatkowitz had been unable to find it because it, and other Chinese parents' cards bearing middle and last names similar to Ching and Chan, were incorrectly alphabetized.

who are paid employees of the Board of Elections.[28/]

Some of the responsibility for the conduct of these inspectors must rest with the Board of Elections. Although the Board usually conducts training sessions for inspectors, there was credible testimony that such sessions were not conducted specially for the May 1 election, and no credible testimony to indicate that they were. Also, the defendants themselves have demonstrated that inspectors received contradictory instructions concerning the May 1 election.[29/]

28/ For example, an inspector examined completed ballots before putting them in the ballot box; inspectors allowed unauthorized personnel to sit at their tables and assist in their functions; inspectors failed to make a thorough search of the computer print-out lists to find voters who were in fact on those lists; inspectors failed in many cases to distribute bilingual materials or inform voters of the possibility of receiving language assistance from the interpreters; and inspectors gave incorrect instructions to voters concerning where and how to vote.

29/ For example, defendants' Exhibit H, entitled "Instructions to Inspectors, Community School Board Elections, May 1, 1973", and included in the materials delivered to inspectors at the polls, speaks only of buff cards and of parent voters being assigned to separate election districts. Plaintiffs' Exhibit 9 (identical to Defendants' Exhibit J for identification) entitled "Community School Board Election, Borough of Manhattan, May 1, 1973 6 a.m. to 9 p.m., Instructions to Inspectors" and mailed to inspectors prior to the election, speaks of a "list of Registered Voters . . . . in place of [the buff cards]," and indicates that all parent voters would be assigned to one election district at any school site.

Finally, some inspectors were seen using at polls servicing predominantly minority voters an election manual applicable to past elections, but not to the May 1 school board election. This manual referred to the use of voting machines (the May 1 election employed paper ballots) and more importantly, referred to a literacy requirement (Plaintiffs' Ex. 10, p. 19). The special May 1 instructions (supra n. 29) did not indicate that they superseded this manual.

The lack of training of, and inconsistent or incorrect instructions to inspectors was especially disruptive of orderly processes in light of the several unique procedures in the May 1 election.

The Board of Elections also did not train nor instruct interpreters in any uniform way. Many interpreters were thus unaware of their proper functions or of the proper way to offer assistance. Inspectors were also not familiar with interpreters' proper functions[30/] and refused in several instances to allow interpreters to assist unless the voter specifically requested such assistance.[31/] Because of a lack of instruction or consistent procedure, interpreters may have acted improperly in some instances. The result was that inspectors or representatives of the Attorney General then moved

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30/ The only instructions inspectors received with respect to interpreters was that they were available and were not to electioneer.

31/ This appears to have been inconsistent with at least the spirit of the Lopez Order. (See n. 5 supra.)

to prevent the interpreter from performing even their legitimate functions. This had serious adverse consequences for voters who spoke, read,or understood little or no English.

In general, the failure of the Board of Elections to provide adequate training for inspectors and interpreters put an excessive amount of discretion in the hands of inspectors unfamiliar with the special nature of this election or the special needs of minority (especially non-English speaking) voters. The result of superimposing a usually partisan electoral process on special school board elections caused an abuse of discretion by the inspectors to the detriment of the rights of minority voters.

B. Conduct which was not on its face illegal or irregular but which had a discriminatory impact on the voting rights of minority voters and was neither explained nor justified by the defendants include 1) wholesale changes in election districts and polling sites in areas servicing predominantly minority voters and 2) placing of polling places in middle-class housing projects to facilitate voting of white voters, without the same advantages for minority voters.

1. Changes in election districts and polling sites.

Between the general elections in November, 1972 and the school board elections on May 1, 1973, the Board of Elections created eleven new election districts from existing districts in the 63rd Assembly District, which encompasses

most of District One.[31] Voters in seven of these districts[32] were assigned to new polling places. The Board of Elections also redrew the lines between old election districts in three instances[33] and changed the polling site of one district which was not renumbered.[34] With minor exceptions, these changes occurred in areas with greater than 40% minority population, and most occurred in areas of greater than 60% minority population. Election districts and polling sites in areas which were 80% - 100% white remained unchanged, with the exception of the 60th E.D.

Except in the most general way, and for the first time in their post-trial memorandum of law, defendants gave no explanation for these changes; and have never explained why they occurred almost exclusively outside of white areas.

Despite the fact that the Board of Elections mailed out to each voter notices informing them of their polling sites, there was testimony that many voters did not receive

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31/ The following new E.D.s were created: 50, 51, 52, 53b, 54, 55, 56, 57, 58, 59, 60.

32/ 50, 51, 55, 56, 57, 58, 60.

33/ The following E.D. lines were redrawn: 1) between 31 and 32; 2) between 18, 27 and 28 and 3) between 21, 23 and 24.

34/ The 30th E.D.

them.[35/] Many voters whose polling sites had been changed came to vote at the wrong sites. When they did so, election inspectors were often unable to direct them to the correct sites due to the complete absence from the polls of election district maps or other common devices which enable an inspector to pinpoint a voter's revised election district or polling site merely by knowing his address. Inspectors who attempted to direct voters to their new polling site in some cases sent such voters on long, futile searches which may have resulted in the voter having failed to vote.

Since the majority of changes in polling sites occurred in predominantly Puerto Rican, black and Chinese areas, it was these voters who were most adversely affected by this haphazard process.

2. Poll placement.

The placement of polling sites also had a racially discriminatory impact on the voters in the May 1 election.

35/ It is perhaps ironic that the only piece of mail from the Board of Elections put into evidence and testified to as having been actually received by a District One resident was Plaintiffs' Exhibit 9, which informed inspector Miriam Rios to report for duty at the 30th E.D. but failed to inform her that the polling site for the 30th E.D. had been moved from its accustomed place, P.S. 34, to a completely new polling site, Emmanuel Church.

Six voting sites were placed in large, predominantly white middle-income housing projects.[36/] This greatly facilitated the voting process for residents of these buildings. The percentage turnout in election districts located in these buildings was 54.90%, well above the District average of 22.45%.

No polling sites were located in buildings housing predominantly Puerto Ricans or blacks; nor was any explanation for this site selection offered by the defendants.

C. Instances of intentional discrimination.

There is no evidence that the Board of Elections or the Board of Education intentionally discriminated against minority voters in the May 1 District One election. However, there were scattered incidents of intentionally discriminatory conduct by individual election inspectors.

For example, particular inspectors were hostile and abusive to particular Puerto Rican and black voters. Certain inspectors instructed Puerto Rican and Chinese voters to mark their ballots so as to render them invalid. One inspector at P.S. 63 required written identification of a white voter and her black companion, but did not require such identification when white voters appeared alone.

36/ 455 F.D.R. Drive (4th & 5th E.D.s); 475 F.D.R. Drive (6th & 7th E.D.s); 504 Grand St. (9th & 10th E.D.s); 383 Grand St. (11th E.D.); 77 Columbia St. (20th E.D.); 175 E. 4th St. (41st & 42nd E.D.s).

We reiterate that these various acts of intentional racial discrimination were not done pursuant to any instructions from the chief administrators of the school board elections. Nor do we find that they caused a denial of voting rights to a large number of voters. Rather, they were perhaps the inevitable result of putting an excessive amount of discretion in the hands of untrained election inspectors, agents and employees of the Board of Elections, in an already racially tense environment. When combined with the practices and procedures outlined above, these acts and omissions denied equal voting rights to a substantial number of black, Puerto Rican and Chinese voters and potential voters in District One.

Conclusions of Law

The plaintiffs allege violations by the defendants of rights protected by the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965 as amended in 1970. 42 U.S.C. §1971, 42 U.S.C. §1973 et seq. This Court has jurisdiction over such claims under 28 U.S.C. §1343(3). The defendants who were officials of the New York City Board of Education or Board of Elections and their employees and agents, including election inspectors, all acted under color of state law.

We start from the established premise that racial or ethnic discrimination in the electoral process violates

the Equal Protection clause of the Fourteenth Amendment, and the Fifteenth Amendment to the United States Constitution, as well as the Federal Voting Rights Acts, 42 U.S.C. §§1971, 1973.[37/]

This is well-established because of the sanctity with which we regard the individual's fundamental right to vote and have his vote count equally with that of all other voters. Dunn v. Blumstein, 405 U.S. 330 (1972); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Reynolds v. Sims, 377 U.S. 533 (1964); combined with the suspicion with which we view any racial or ethnic distinction resulting from

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37/ Although specific practices on May 1 can be considered violations of specific sections of the Voting Rights Acts and Amendments (e.g. the lack of effective bilingual assistance violated 42 U.S.C. §1973b(e) and 42 U.S.C. §1973aa. Puerto Rican Organization for Political Action v. Kusper, ___ F.2d ___ 42 L.W. 2333 (7th Cir. December 18, 1973)), we view the policies and practices of the May 1 District One election in their totality, and find it unnecessary to evaluate them in any but general equal protection terms.

Black, Puerto Rican, and Chinese voters and potential voters may each constitute an identifiable class for purposes of the Fourteenth Amendment. See e.g. White v. Regester, 412 U.S. 755 (1973); Katzenbach v. Morgan, 384 U.S. 641 (1966); Hernandez v. Texas, 347 U.S. 475 (1954); Yick Wo v. Hopkins, 118 U.S. 356 (1886). Because of the similarities in the problems incurred by these groups with respect to voting rights on May 1 in District One, we have considered them together as an identifiable class for purposes of the Fourteenth Amendment, Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189 (1973) White v. Regester, supra, despite the fact that, taken together, they constitute almost a majority of the resident population and over 90% of the school population in District One.

governmental actions or omissions. White v. Regester, supra; McLaughlin v. Florida, 379 U.S. 184 (1964); Korematsu v. United States, 323 U.S. 214, 216 (1944).

Governmental practices which result in distinctions among voters and potential voters are subject to the strictest judicial scrutiny when the distinctions run along racial or ethnic lines. Such equal protection principles clearly apply to local school board elections. Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969); Oliver v. Bd. of Education of the City of New York, 306 F. Supp. 1286 (S.D.N.Y. 1969); Brown v. Post, 279 F. Supp. 60 (W.D. La. 1968).

Discrimination in voting rights is no less repugnant to the Equal Protection clause because it is the result of governmental administrative practices or procedures, and not specific statutes. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Baker v. City of St.Petersburg, 400 F. 2d 294 (5th Cir. 1968); United States v. Dogan, 314 F.2d 767 (5th Cir. 1963).

Nor have this and other circuits found it constitutionally significant that, as in this case, the largest racially discriminatory impact was not due to intentional discrimination of government officials, but rather was the natural result of their policies and pronouncements which on their face were neutral. Chance v. Board of Examiners,

458 F.2d 1167 (2d Cir. 1972); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968); Hawkins v. Town of Shaw, Miss., 461 F.2d 1171 (5th Cir. 1972) (en banc); Hobson v. Hansen, 269 F. Supp. 401, 497 (D. D.C. 1967), aff'd. sub nom, Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969); Ury v. Santee, 303 F. Supp. 119 (N.D. Ill. E.D. 1969). Racial discrimination, whether intentional or unintentional, has been condemned as unconstitutional when the right to an effective vote is at stake. Harper v. Virginia Board of Elections, supra; Gomillion v. Lightfoot, 364 U.S. 339 (1960); Toney v. White, 348 F. Supp. 188, 195 (W.D. La. 1972), aff'd in pertinent part, 476 F.2d 203 (5th Cir. 1973); U.S. v. Post, 297 F. Supp. 46, 51 (W.D. La. 1969).

Applying these principles, this Court finds that the practices employed by the defendants on May 1 resulted in the election being conducted in a manner which denied minority voters equal protection of the law.

Although strict judicial scrutiny of a racially disparate impact on voting rights might in theory reveal a "compelling state interest" sufficient to validate the challenged practices (see e.g. Korematsu v. United States, supra), such is not the case at bar. In fact, most of defendants' practices discussed in the Findings of Fact are

not buttressed in the record by evidence of any state interest. These practices do not even bear a "rational relationship" to a legitimate state interest, so as to pass muster under the least stringent equal protection test.

First and foremost, a majority of the actual votes affected probably resulted from the irregularities discussed in Part IIIA, supra. Polls did not open on time; parent materials and bilingual materials arrived late or not at all; the documentary identification requirement was employed at polls servicing minority voters almost exclusively; inspectors and interpreters were inadequately prepared. These irregularities had a discriminatory impact on minority voters and, as deviations from established procedure, could not serve any state interest, let alone a compelling one. Indeed, even the use of computer print-outs, which directly and indirectly caused many of the irregularities, was not justified on the record.

Second, the defendants' evidence offered little or no justification in terms of the state's interest in any of the practices discussed in Part IIIB supra, which, while not irregular, had discriminatory impact on minority voters.

Concerning the changed polling sites, the defendants state in their post-trial memorandum of law:

> State-wide reapportionment as a result of the 1970 Census Reports of necessity required a change in the lines of various assembly districts which in turn required

> changes in the lines of election districts contained therein.

Beyond this generalization, there is nothing in the record to explain why the particular changes in polling sites and election districts occurred in largely minority areas. Nor is there any explanation as to why the voters were not effectively notified of these changes. While defendants'-general explanation could perhaps be expanded to demonstrate the necessity for many of the changes, we cannot speculate as to what such demonstration might show.

Similarly, the placement of polling sites in residences of white voters and not minority voters was not explained. Defendants' post-trial memorandum stated:

> The use of community rooms as polling places in white districts was never intended to discriminate racially.38/ This was done because such community rooms were located in large high-rise apartment complexes where a sufficient number of people resided to constitute an Election District.

Aside from the fact that no data to this effect is included in the testimony or exhibits, this statement fails to explain why these apartment house polling places were only situated in white areas. The disproportionately high turnout at these polling sites leads us to conclude that this practice had a racially discriminatory impact.

While these last two practices had perhaps a

38/ We find no basis in the record to disagree with this statement, but find it not conclusive on the issue of discrimination.

less substantial discriminatory impact than the irregularities, they did have some such impact, and the state's interest in these procedures was not demonstrated.

Finally, as to the isolated instances of intentional discrimination, there was no attempt, as there could not be, to justify them. Defendants contend that such incidents were not intended to discriminate. We find to the contrary, as to certain of the instances, although we reiterate that the total impact of intentional discrimination alone was not substantial.

In sum, this Court finds that the procedures actually employed on May 1 in District One resulted in an election in which minority voters' rights were impaired to a substantial degree. Such procedures did not demonstrably serve the state's interests. The state has an interest and election officials an affirmative duty under the Fourteenth and Fifteenth Amendments and the Voting Rights Acts to see to it that the voting rights of all classes of voters are not impaired. Toney v. White, supra; Brown v. Post, supra; Ury v. Santee, supra. While we cannot determine to a mathematical certainty whether this impairment of rights modified the outcome of the election, we conclude that such a possibility has been demonstrated. We find that the May 1 school board election in District One resulted in substantial constitutional infringements to minority voters

and potential voters, and was therefore unconstitutionally conducted.

Remedy

Defendants do not contend that racial and ethnic discrimination in the election process, whether intentional or unintentional, is permissible. Rather, they argue that a finding of discrimination does not require setting aside an otherwise valid election.

The federal courts have broad discretionary power to void a state election found to be discriminatory, and to require a new election, Hamer v. Campbell, 358 F.2d 215 (5th Cir. 1966) cert. denied 385 U.S. 851 (1966); State of Alabama v. United States, 304 F.2d 583, 591 (5th Cir.) aff'd per curiam 371 U.S. 37 (1962); United States v Post, supra; Brown v. Post, supra; although such relief is drastic and its use should be guardedly exercised. Bell v. Southwell, 376 F. 2d 659 (5th Cir. 1967).

The Findings of Fact contained herein demonstrate that, unlike Bell, this case is not one where the discrimination was the result of the defendants' evil motive or where it was "gross, spectacular and wholly indefensible". 376 F.2d at 664. Nevertheless, we have found that the instances of discrimination were substantial, so much so that they could very well have modified the outcome of the election. Under these circumstances, as was held in a recent en banc Fifth

Circuit opinion, Toney v. White, ___F.2d___ 42 L.W. 2331 (72-3307, December 3, 1973) and cases cited therein, we still can set aside the discriminatory election if the equities warrant it, and, if we conclude that the plaintiffs acted diligently in asserting their rights.

Plaintiffs' diligence in asserting their claims prior to the election has been considered an important factor in determining the question of setting aside a discriminatory election. Toney v. White (en banc) supra; Smith v. Paris, 257 F. Supp. 901 (M.D. Ala. 1966) aff'd in pertinent part 386 F.2d 979 (5th Cir. 1967); United States v. Democratic Executive Committee, 288 F. Supp. 943 (M.D. Ala. 1968); McGill v. Byals, 253 F. Supp. 374 (M.D. Ala.) (three-judge court) appeal dismissed 385 U.S. 19 (1966). The theory is, of course, that plaintiffs should not be permitted to complain about the results of an election if they failed previously to complain about the procedures (of which they had notice) under which the election was to be conducted. In this case, plaintiffs' pre-election diligence is unassailable. Several of these plaintiffs, along with other minority voters in New York City, instituted at least two successful lawsuits prior to the election, (see p. 3 and p. 8, n. 8 supra) seeking relief from unconstitutional procedures. In addition, various groups of minority repre-

sentatives lobbied the Board of Elections for policy changes. That which was not litigated nor lobbied for prior to the election could not have been, since many of the discriminatory practices did not surface until election day. To the extent they could, these plaintiffs and other minority residents of District One diligently pursued their rights prior to the election.

In the final analysis, we believe the remedy sought by the plaintiffs --- setting aside the May 1 election and the ordering of a new election --- is necessary and proper in this case for at least three basic reasons. First, given the substantial violation of constitutional rights which occurred on May 1, we perceive no effective alternative which would vindicate these rights, nor have any of the parties suggested any alternative. Prospective relief alone would be of little consequence or comfort to the many voters who sought to vote, many for the first time, on May 1, and could not do so effectively. In this posture, refusal to set aside the May 1 election and order a new election would be tantamount to telling these voters and potential voters that, although they were wronged, the federal courts are powerless to effectively redress their grievances. This we will not do.

Second, the facts of this case make it particularly necessary that we nullify the discriminatory impact of the

election. Whereas in general governmental elections all voters have an equal stake in the outcome, in school board elections parent voters have a unique interest since their children are directly benefited or harmed by the educational policies promulgated by any elected school board. We need not engage in any debate on the merits of any particular educational policy to conclude that in this case, parent voters, the overwhelming majority of whom were black, Puerto Rican and Chinese, had a disproportionately high interest [39/] in a fairly conducted election, because those elected would be making decisions affecting the education and daily lives of their children. Where the election was not fairly conducted, and especially where the group with the greatest stake in the outcome was also subjected to the greatest inequity, the results cannot be allowed to stand.

Finally, we have carefully considered the factor of the community's interest in stability and the orderly transition of school district government. McGill v. Ryals, supra. This Court is not blind to the atmosphere of intense

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39/ See p. 13 supra, where we find that the proportion of minority members among parent voters was significantly higher than the proportion of minority members among the regularly registered resident voters.

racial hostility which has existed in District One throughout the last several years. While the total community dispute is not before this Court, our consideration of the appropriate remedy must include consideration of whether the remedy we choose enhances the conflict or effectively resolves that part of it which has properly been brought before us.

We conclude that the community interest in stability and orderly transition, especially in light of the constitutional violations which we have found, may be best served by holding a new election. The election and installation of the school board elected on May 1 was not followed by orderly transition nor stability; on the contrary, the subsequent District One school governance situation can only be termed chaotic. We do not presume that a new election will necessarily remedy this situation; we merely observe that the factors which prompted the McGill three-judge court to refuse to set aside an illegal election are not present in this case.

Having balanced the equities, we conclude that the public interest in fair electoral processes requires that the challenged election be set aside, and a new election held which employs procedures which allow all those who wish to vote, and who qualify, to cast an effective vote.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED that the May 1, 1973 election for membership to the school board of Community School District One is declared invalid and the positions on the school board of Community School District One are declared to be vacant, and it is further

ORDERED that a special election shall be held for membership to the school board of Community School District One, and the parties are directed to submit proposals for the scheduling and conduct of the special election within two weeks of the date of filing of these Findings; and it is further

ORDERED that pending the election of a new school board for Community School District One, the Chancellor of the City School District of the City of New York shall exercise the statutory and administrative powers of the school board of Community School District One, and it is further

ORDERED that this Court retains jurisdiction over this action, pending the special election.

SO ORDERED.

United States District Judge

Dated: New York, N. Y.
January , 1974.

LAW DEPARTMENT
MUNICIPAL BUILDING, NEW YORK, N.Y. 10007
ADRIAN P. BURKE
J. LEE RANKIN, Corporation Counsel

January 24, 1974

Hon. Charles E. Stewart
District Judge
United States District Court
for the Southern District
of New York
Foley Square
New York, New York

Re: Coalition v. Board of Elections
(73 Civ. 3983)

Dear Sir:

In response to the provisions of your order dated January 11, 1974 defendants submit the attached proposed order for the conduct of the special election ordered for Community School District No. 1. The following additional comments might be helpful in explaining some of the provisions which defendants include in their proposed order:

April 18, 1974 has been provided as the date for conducting the election because it is the earliest possible practical date by which all the necessary preparations could be completed.

An additional important aspect regarding the date of the election should be brought to the Court's attention. The New York State Legislature has not yet determined the date for the Congressional, State and local primary elections which are to be held this year and which have in the past several years been held in June. It is understood that the Legislature is contemplating holding the primary elections in September, in which case the regular voter registration forms (buff cards) would be available for use during the April 18 special election provided for in the proposed order.

However, in the event that the primary elections were scheduled for June (as they were in 1973), the buff cards, which are required by law to be available in the weeks preceding the primary election, would not be available for use in the special election and some other provision would have to be made accordingly.

Since there has been no finding of any discriminatory practices in regard to the registration of voters and to the nomination of candidates, it is suggested that the election be conducted with the same candidates who competed on May 1, 1973 and the persons eligible to vote be the same people who were eligible to vote at the May 1, 1973 election.

It should also be noted that a reopening of the petitioning and registration processes would of necessity delay the holding of the special election by many weeks.

It is proposed that the same polling places used on May 1, 1973 be used in order to avoid any further confusion in regard to still another change in polling places. The Board of Elections will mail a notice to all eligible voters, printed in English and in Spanish, notifying them of the date of the election and the proper polling place.

It is respectfully requested that where divergent proposals are submitted on behalf of plaintiffs that such matters be set down for conference in order that the differences may be adjusted or adjudicated.

Respectfully yours,

ADRIAN P. BURKE
Corporation Counsel

By _____
Assistant Corporation Counsel

CC:
Charles E. Williams III

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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COALITION FOR EDUCATION IN DISTRICT ONE, et. al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et. al.,

Defendants.

----------x

ORDER

73 Civ. 3983 (CES)

An order of this Court having been duly filed on January 11, 1974 ordering that the May 1, 1973 election for membership to the school board of Community School District One is declared invalid and further ordering that a special election shall be held for membership to the school board of Community School District One, it is now

ORDERED that such special election be held on April 18, 1974 between the hours of 6:00 a.m. and 9:00 p.m., and it is further

ORDERED that those provisions of this Court's previous orders in Lopez v. Dinkins (73 Civ. 695) applicable to the conduct of the May 1, 1973 community school board elections are incorporated herein by reference; and it is further

ORDERED that (1) the ballot for the special election consist of the same candidates whose names appeared on the ballot in the May 1, 1973 election, (2) only those persons who were eligible to vote in the May 1, 1973 election shall be eligible to vote in the special election, and

(3) the same polling places used in the May 1, 1973 election shall be usedwherever possible, in the special elections, and it is further

ORDERED that the Board of Elections shall mail a notice in English and Spanish to all registered and parent voters advising them of the date of the election and the location of the appropriate polling place; and it is further

ORDERED that the Board of Elections provide for the necessary training of the inspectors and interpreters provided for herein and will furnish the necessary informational material for such inspectors and interpreters, including appropriate maps and/or other material necessary to assist the voter in locating the proper polling place.

SO ORDERED

_____

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,	:	
Plaintiffs,	:	
-against-	:	73 Civil 3983
THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,	:	
Defendants.	:	

ORDER

Based on the Findings of Fact and Conclusions of Law previously made herein, it is hereby ORDERED:

1. The Board of Elections of the City of New York shall establish a Special Unit whose sole responsibility shall be to conduct the special election to be held pursuant to this order.

2. _____, _____ and _____ shall serve as independent Commissioners in charge of Special Unit and they shall be responsible for conducting the election in compliance with this order. (Note: The State Commissioner of Education has expressed a willingness to recommend individuals for the Commission.)

3. The Commissioners shall file bi-weekly reports with this Court and attorneys for plaintiffs of the actions taken by the Special Unit in furtherance of this order.

DEPUTY REGISTRATION

4. The Special Unit shall, commencing on the date of this order, certify and provide parent registration forms and instructions to persons who wish to serve as volunteer deputy registrars empowered to register parents of public school children as "parent voters."

5. Only one deputy shall be required to register a parent voter. No special restrictions shall be placed on deputy registrars as to the times and places for registration of parent voters.

6. Deputy registrars shall inform parent registrants both orally and in writing as to the date and times of the election, and shall give the parent a receipt of registration.

7. The Board of Education of the City of New York shall compile a list of the names and addresses of all parents of public school children in District One, a copy of which shall be delivered to this Court, attorneys for plaintiffs and the Special Unit on or before February 22.

8. The Special Unit shall give the list of parents of children attending District One schools to all persons certified as Deputy Registrars and shall use the list for the purpose of sending notifications to parents concerning registration and voting.

PETITIONING

9. The Special Unit shall advertise the opportunity for District One residents to be candidates for the school board through the news media.[1/]

10. The Special Unit shall prepare and make readily available Spanish/English and Chinese/English nominating petitions and instructions for candidates regarding fulfillment of ballot requirements.

11. Candidates shall be required to fulfill the requirements of Section 2590-c (2) and (3) of the Education Law requiring 200 signatures, but the definition of a parent eligible to sign the petition shall be any parent of a child attending public school, whether registered or not at the time the petitions are certified.

1/ A number of candidates in the last election have indicated publically they do not wish to run again in the special election.

The Commission shall be responsible for accepting the petitions, and in the event of a challenge, for verifying the validity of the registered voter signatures by comparing them to the registration card, and the parent signatures by comparing signatures to school records. The Commission shall be guided by the principle that a candidate should be given ballot status if the candidate makes a good faith effort to comply with the law, and that technicalities shall not be used to keep candidates off the ballot.

12. Petitioning shall begin as soon as the petitions are made available, which shall not be later than February 11. Completed petitions must be submitted to the Special Unit no later than 5 p.m. on March 8.

REGISTRATION

13. All District One parents registered to vote as parent voters prior to May 1, 1973 shall remain registered to vote in this election. The Commission shall notify these parents by mail that they are still eligible to vote in the special election. This notification shall be in English, Spanish and Chinese.

14. The Special Unit shall notify by mail all unregistered parents of public school children in District One of the opportunity to register and vote in the special election, giving the times, dates and places for registration. This notification shall be in English, Spanish and Chinese. This shall be done during the week of February 25 - March 1.

15. The Special Unit shall prepare a list of all parents previously registered as parent voters and a list of all regular voters eligible to vote in the special elections. These lists shall be prepared by February 15 and made available to the public.

16. On or about March 4, the Special Unit shall conduct a training session for registrars and interpreters who will serve

at the registration sites. The training session shall be held in District One. The content of the training session shall be determined after consultations with attorneys for plaintiffs. Training shall include but not be limited to instructions on how to fill out forms utilized in registration; laws regarding eligibility to register as either a parent or regular voter; and instructions on how to determine the polling site of a registrant.

17. From March 11 through April 6, there shall be local registration of regular and parent voters in each of the schools listed as future polling sites (see appendix A).

18. Registration of both regular and parent voters shall be held from Monday through Friday, 7 a.m. to 7 p.m., and Saturdays, 9 a.m. to 6 p.m.

19. The registration shall be conducted by registrars selected and trained by the Special Unit. No registrar may be a resident of District One, and one half the registrars selected and trained must be fluent in Spanish as well as English. In assigning registrars to registration sites, one half of those assigned to any one site must be fluent in Spanish as well as English.

20. At the following ten schools, one of the registrars, either the Democrat or the Republican, must be fluent in Chinese as well as English: JHS 22, JHS 56, JHS 60, JHS 71, PS 4 , PS 19 , PS 20 , PS 63, PS 140, PS 160.

21. In the event that an insufficient number of bilingual registrars are available, interpreters shall be hired to assist the registrars. One interpreter shall be hired for each registration site having an insufficient number of Spanish speaking registrars, and one interpreter shall be hired for each registration site listed in paragraph 20, supra, which has an insufficient number of Chinese speaking registrars.

22. If it is determined that a polling site will service a community with 5% or more persons who speak a language other than English, Spanish or Chinese, an interpreter shall be hired who is fluent in that language.

23. The registration period shall be widely publicized using the public media, posters, flyers, circulars for public school pupils to take home to their parents, direct mailings, and local community agencies. This publicity shall be in Spanish and Chinese, as well as English.

24. At all times during registration there shall be posted at each registration site a map of the election districts of the applicable assembly district, and a list of the polling sites for each election district. The polling site information shall remain posted within each school until after the special election.

25. On April 15 or before, the Special Unit shall make available a list of all persons newly registered by the local registration and by deputy registrars. This list shall be divided into two parts: those newly registered regular voters, and those parents registered as parent voters. This list, as well as the list of all parent and regular voters eligible to vote as of February 15 shall be made available to residents of or parent voters in Community School District One.

26. On April 22 the Special Unit shall make available a final updated list of newly registered voters certified since April 15, the last date for registration of parent voters or regular voters for this election. The Unit shall then compile a final complete list of eligible regular voters and of parent voter

27. During the week of April 22-April 27 the Special Unit shall notify all registered regular and parent voters of their polling sites and the date and times for the election. It shall notify all parents not yet registered that they may still register

and vote if they present themselves to the principal's office of their child's school on the day of the election, where they will be registered, certified, and told where to vote.

CONDUCT OF THE ELECTION

28. Voters of particular election districts shall be assigned to polling sites as per the list attached as appendix C.

29. Parents voting as parent voters shall vote at a separate table identified clearly in English, Chinese and Spanish as the "Parent Voter" table. In all respects, the parent voter table shall be treated like an election district table.

30. The Special Unit shall have the discretion of grouping voters from more than one election district at the same table if there are fewer than 100 voters in an election district. Each election district table must be plainly marked by signs as to the number of the election district being serviced by the table.

31. A map of the assembly district showing the election districts, and a list of the polling sites for each election district shall be prominently displayed on the day of the election at each polling site. In addition, each election inspector shall be given a street finder for the purpose of aiding voters to find their proper polling sites.

32. Prior to April 29, the Special Unit shall recruit a sufficient number of inspectors to allow four for each table on election day. One half of all the inspectors must be fluent in Spanish as well as English. They must be assigned in such a way as to insure that half of inspectors at each table are fluent in Spanish and English. One inspector at each of the parent voter tables at the schools listed in paragraph 20 must be fluent in Chinese as well as English.

33. Only non-residents of District One may be appointed as election inspectors.

34. On or about April 29 the Special Unit shall, after consultation with plaintiffs' attorneys, conduct a training session for inspectors which shall include but not be limited to the requirements for voting; how to handle challenged voters; the method for determining the proper polling site of a voter; the duties and responsibilities of interpreters; duties and responsibilities of poll watchers; how to fill out report forms; proper handling of the ballot and proper instructions to voters; how to assist illiterate voters.

35. There shall be an interpreter fluent in Spanish and English present at each polling site and for the ten schools listed in paragraph 20 supra, there shall be an interpreter fluent in Chinese and English. The interpreters shall be trained on or before April 29.

36. School shall not be in session in District One on the day of the election.

37. Buff cards containing signatures must be utilized on election day for both regular and parent voters.

38. No written identification shall be required of any voter. The voter shall be required to identify himself or herself orally by name and address, and to affirm that he or she has not voted previously in this election. Then the voter shall be permitted to vote after signing the registration card.

39. Each table shall have a list of registered voters and of parents of children in District One, and a street finder to facilitate giving polling site information to voters who present themselves at the wrong table to vote.

40. If on the day of the election a parent of a child attending school in District One presents himself to vote, and the parent's card is missing or he or she has not yet registered,

the parent shall be instructed to go to the office of the principal. The office of the principal shall be open and staffed on the day of the election, and in addition a deputy registrar shall be in each school principal's office. The deputy registrar shall register any parent who the principal or his or her staff certifies to be the parent of a child in the school. The parent shall then be instructed to take the registration card to the parent voter table where, after signing the registration card, the parent shall be permitted to vote after taking the usual affirmation that he or she has not voted elsewhere that day.

41. Any parent not certified by the principal's office shall be informed that he or she has the right to obtain an order from the Commissioners to vote.

42. A voter who has been challenged and whose name appears on a challenge list shall be permitted to vote upon the administering of an oath pursuant to Section 225 of the Election Law.

43. The Special Unit shall place on a challenge list any voter whose notification is returned in the mails, or who is suspected for any reason of not being a resident of District One. The registration card shall not be removed by the Special Unit from the cards of eligible voters, but shall remain in place and the voter shall be considered a challenged voter entitled to vote upon the administration of the required oath.

44. A person who appears at the wrong polling site shall be instructed to go to his proper polling site.

45. On the day of the election the members of the Commission shall be present in the District Office of District One. The Commission shall be empowered to settle all disputes that arise on that day and are specifically empowered to issue orders that a voter be allowed to vote. Therefore, if any regular or parent

voter is denied the right to vote for any reason, said voter must be informed that he or she can go before the Commission and seek an order that will allow him to vote.

46. If a person appears at a polling site to vote and is turned away without voting, his or her name and address as well as the reason for denying the voter the right to vote must be recorded on forms provided by the Special Unit.

THE BALLOT

47. Instructions on the ballot must be in English, Spanish and Chinese.

48. Names of the candidates shall be in alphabetical order and shall be rotated by polling site, not by election district. 2/

49. The names of candidates shall be written in Chinese as well as English.

50. Each candidate shall be permitted to use a symbol on the ballot before his or her name by submitting to the Special Unit a signed notarized document indicating the symbol to be used. If two or more candidates wish to use the same symbol, they must submit the symbol in a document signed by all the candidates wishing to use the same symbol, and no other candidate will be permitted to use such a symbol without the written consent of all the candidates using the same symbol. The request to be identified by a symbol must be submitted to the Special Unit in a letter postmarked no later than midnight, April 15.

51. The Special Unit shall be empowered to reject any symbol considered improper, such as a symbol similar to that of any existing political party in the state, or any religious symbol, or symbol thought to be too similar to that of another candidate's symbol already accepted.

2/ This is actual requirement of Section 2590-c(6) of Education Law, which was not followed on May 1. Names were rotated by E.D. rather than polling site.

52. The polls shall be open from 6 a.m. to 9 p.m. on the day of the election.

53. Each candidate shall be permitted to have one poll watcher at each table within a polling site.

54. At the close of the polls, the ballots shall be stored in the police precincts.

55. The count shall be conducted on May 9 at JHS 71 in conformity with the procedure employed after the May 1, 1973 election.

56. The special election for Community School Board in District One shall be held according to the following timetable:

a)	Effectively immediately	Volunteer deputy registration begins.
b)	February 11 or earlier	Petitioning begins.
c)	February 15	Date by which Special Unit must compile list of eligible regular voters and list of parent voters.
d)	February 22	Date by which Board of Education must compile list of parents of District One school children, and their addresses, and turn list over to Special Unit.
e)	February 25-March 1	Special Unit to notify all parents not already registered of the times and places of registration.
f)	March 4 or thereabouts	Training session for official registrars and interpreters.

g)	March 8, 5 p.m.	Petitioning closes.
h)	March 11	Local registration for regular and parent registration opens and continues for four weeks, Monday through Friday from 7 a.m. to 7 p.m. and Saturdays from 9 a.m. to 6 p.m.
i)	March 12, 5 p.m.	Challenge period for petitions closes.
j)	April 6, 6 p.m.	Local registration period ends.
k)	April 15, 5 p.m.	Deputy registration ends. First list of registered parents to be made available on this date. List of all newly registered regular voters to be made available also.
	April 15, midnight	Candidates wishing to use symbol on ballot must notify Commissioners by letter post-marked no later than midnight.
l)	April 22	Complete list of all persons eligible to vote in special election to be made available. One list to contain all registered regular voters. One list to contain list of all parents, with notation as to whether or not they have registered to date.

m)	Week of April 22-27	All registered regular voters to receive notification of polling site and dates and times for election. All unregistered parents to receive notification they are still eligible to vote and specifying how to register on day of election. All registered parents to receive notice of polling site and dates and times for election.
n)	April 29 or thereabouts	Training session for inspectors and interpreters.
o)	May 6	School holdiay. Election.
p)	May 6, 6 a.m. to 9 p.m.	Polls open.
q)	May 6, 9 p.m. to May 9, 9 a.m.	Storage of ballots at police precinct
r)	May 9, 9 a.m.	Count beings.

SO ORDERED

UNITED STATES DISTRICT JUDGE

DATED: New York, New York
January , 1974.

PROPOSED POLLING SITES FOR SPECIAL ELECTION

Election District	Precinct	Location	Name of School
For 63rd A.D.:			
1	7	200 Monroe	Seward Park Annex
2	7	200 Monroe	Seward Park Annex
3	7	371 Madison	P.S. 82
4	7	371 Madison	P.S. 82
5	7	371 Madison	P.S. 82
6	7	28 Cannon	P.S. 110
7	7	28 Cannon	P.S. 110
8	7	28 Cannon	P.S. 110
9	7	311 E. Broadway	P.S. 134
10	7	28 Cannon	P.S. 110
11	7	220 Henry	J.H.S. 56
12	7	311 E. Broadway	P.S. 134
13	7	311 E. Broadway	P.S. 134
14B	7	107 Suffolk	P.S. 160
15	5	198 Forsyth	P.S. 91
16	7	107 Suffolk	P.S. 160
17	7	166 Essex	P.S. 20
18	7	123 Ridge	P.S. 140
19	7	203 Rivington	P.S. 4
20	7	111 Columbia	J.H.S. 22
21	7	111 Columbia	J.H.S. 22
22	7	135 Mangin St.	P.S. 97
23	7	135 Mangin St.	P.S. 97
24	9	131 Lewis	P.S. 188
25	9	131 Lewis	P.S. 188

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Election District	Precinct	Location	Name of School
26	9	333 E. 4 Street	P.S. 15
27	9	600 E. 6 Street	J.H.S. 71
28	9	600 E. 6 Street	J.H.S. 71
29	9	600 E. 6 Street	J.H.S. 71
30	9	131 Lewis	P.S. 188
31	9	730 E. 12 Street	P.S. 34
32	9	730 E. 12 Street	P.S. 34
33	9	730 E. 12 Street	P.S. 34
34	9	605 E. 9 Street	P.S. 64
35	9	610 E. 12 Street	P.S. 61
36	9	420 E. 12 Street	J.H.S. 60
37	9	600 E. 6 Street	J.H.S. 71
38	9	121 E. 3 Street	P.S. 63
39	9	121 E. 3 Street	P.S. 63
40	9	121 E. 3 Street	P.S. 63
41	9	113 E. 4 Street	P.S. 169
42	9	113 E. 4 Street	P.S. 169
43	9	420 E. 12 Street	J.H.S. 60
44	9	150 First Avenue	P.S. 122
45	9	185 First Avenue	P.S. 19
46	9	185 First Avenue	P.S. 19
47	9	150 First Avenue	P.S. 122
48	9	121 E. 3 Street	P.S. 63
49	9	113 E. 4 Street	P.S. 169
50	5	198 Forsyth	P.S. 91
51	9	113 E. 4 Street	P.S. 169
52	7	123 Ridge	P.S. 140
53B	5	198 Forsyth	P.S. 91

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Election District	Precinct	Location	Name of Location
54	9	333 E. 4 Street	P.S. 15
55	9	333 E. 4 Street	P.S. 15
56	9	605 E. 9 Street	P.S. 64
57	9	610 E. 12 Street	P.S. 61
58	9	610 E. 12 Street	P.S. 61
59	9	121 E. 3 Street	P.S. 63
60	9	150 First Avenue	P.S. 122
For 62nd A.D.:			
13B	7	327 Cherry	P.S. 137
15B	7	327 Cherry	P.S. 137
16B	7	220 Henry	J.H.S. 56
For 64th A.D.:			
35B	9	185 First Avenue	P.S. 19
36	9	113 E. 4 Street	P.S. 169
37	9	113 E. 4 Street	P.S. 169
38	9	113 E. 4 Street	P.S. 169
39	9	185 First Avenue	P.S. 19
40	9	185 First Avenue	P.S. 19
41	9	185 First Avenue	P.S. 19
93	9	113 E. 4 Street	P.S. 169
94	9	185 First Avenue	P.S. 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 Civ. 3983

PRELIMINARY ORDER

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Based upon the Findings of Fact, Conclusions of Law and the Order previously entered herein, it is hereby

ORDERED that the Board of Elections of the City of New York establish a Special Unit whose sole responsibility shall be to conduct the special election called for by the Order of January 11, 1974, and it is further

ORDERED that Arthur Liman (Chairman), Hector I. Vazquez and Bernard C. Fisher shall serve as independent officers appointed by this Court, to set policy after consultation as seems desirable with the parties and with interested groups for the Special Unit as to the procedures to be followed in preparation for and in the conduct of the special election, and to oversee the conduct of that election, and it is further

ORDERED that the officers shall report periodically to the Court and to counsel for the parties herein as

to actions taken by the officers and the Special Unit in furtherance of this Order, and it is further

ORDERED that as a first step, the officers shall a) familiarize themselves with the prior findings and conclusions of this Court, the proposals for the special election submitted by the parties and interested civic groups, and any other data they deem relevant, b) consult with the parties and the staff of the Special Unit, and c) thereafter, on or about February 13, 1974, submit to the Court recommendations as to at least (but not limited to):

1) the necessity of, and procedures for providing further opportunities for registration to vote in the special election, and

2) the necessity of, and procedures for providing further opportunities for the nomination of candidates for office in the special election, and

3) a preliminary target date for holding the special election,

and it is further

ORDERED that in carrying out any and all of their various functions, the officers shall be afforded complete access to all records maintained by the Board of Elections and Board of Education, whether such records are ordinarily available to the public or not, and it is further

ORDERED that in carrying out any and all of their various functions, the officers and the Special Unit

shall afford the residents of Community School District One their full and complete rights guaranteed by the United States Constitution and the federal Voting Rights Acts, consistent with this Court's prior findings and conclusions, while, to the extent possible, complying with the statutory and constitutional provisions of the State of New York.

SO ORDERED.

/s/ Charles E. Stewart Jr.
United States District Judge

Dated: New York, N.Y.
February 1, 1974.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

v.

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

73 Civ. 3983

ORDER

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Based upon the Findings of Fact, Conclusions of Law, the Orders Previously Entered herein, the Report dated February 28, 1974 of the Committee appointed by this Court on February 1, 1974, and the Plan submitted by the Director of the Special Unit, it is hereby Ordered as follows:

1. The Special Election shall be held on Tuesday, May 14, 1974.

2. All registered voters residing within Community District One (the "District") and all registered parents of children attending a school under the jurisdiction of the Community Board of the District who are citizens of the state, residents of the City of New York for at least 30 days and at least 18 years of age shall be eligible to vote at the Special Election.

3. The Special Unit for the School Board Elections shall afford residents and parents the opportunity to register at the twenty public elementary, intermediate and

junior high schools within the jurisdiction of the Community Board of the District from Monday March 18, 1974 through noon Saturday, March 23, 1974. Registration may also be effected through May 3, 1974 at the offices of the Board o. Election at 80 Varick Street. Such registration shall be the responsibility of the Special Unit. The Board of Education is directed to provide the Special Unit with the names and addresses of all parents of children in the schools within the jurisdiction of the Community Board of the District, and such other records and information as may be required by the Special Unit to carry out its responsibilities hereunder. The Special Unit shall maintain the confidentiality of such records and information.

4. Parent voters who registered for the May 1, 1973 election for the Community Board of the District shall not be required to re-register for the Special Election, but such voters may be declared ineligible to vote if they are no longer parents of children within the jurisdiction of the Community Board of the District.

5. All candidates who appeared on the ballot for the May 1, 1973 election for membership to the Community Board of District One shall be candidates in the Special Election without need for new petitions unless 1) by letter postmarked no later than March 15, 1974, they notify the Special Unit of their inability or unwillingness to stand for election, or 2) they no longer meet the qualifications for election prescribed by Section 2590-c4 of the Education Law of the State of New York.

6. Additional candidates who meet the qualifications of Section 2590-c4 of the Education Law may be nominated by petitions in accordance with the provisions of Section 2590-c6 of such law. Petitions shall be filed between March 16, 1974 through April 3, 1974. No signature on such petitions shall be declared void on the ground that the elector signed a petition for the May 1, 1973 election unless the petition so signed was for a candidate who shall appear on the ballot for the Special Election pursuant to Section 5 of this Order.

7. General Challenges to petitions and qualifications of candidates shall be filed with the Special Unit by midnight April 8, 1974, and Specific Challenges by April 11, 1974, with hearings to be held no later than April 14, 1974.

8. The polling places for the Special Election on May 14, 1974 shall be the twenty public elementary, intermediate and junior high schools within the jurisdiction of the Community Board of Community District One (subject to such additions or modifications as may appear appropriate to this Court upon showing made prior to March 22, 1974). The polls shall be open from 6 A.M. to 9 P.M.

9. The Special Unit shall have responsibility for informing the community concerning the Special Election, including the providing of reasonable notice to (a) residents of the Districts and parents of children in schools within the jurisdiction of the Community Board of the District of their opportunities to register, (b) registered voters, including parent voters, of the date of the Special Election, and their assigned polling places, and (c) candidates who

appeared on the May 1, 1973 ballot of the provisions of Section 5 of this Order.

10. The Special Unit shall have the responsibility for the training and supervision of the registrars, inspectors and interpreters for the Special Election.

11. No voter shall be disqualified on the ground that he voted in a different district in the May 1, 1973 Community School Board Elections.

12. The Director of the Special Unit shall consult with the Committee appointed pursuant to this Court's Order of February 1, 1974 concerning the steps being taken to carry out the Order.

13. Except as otherwise provided by this Order, the Special Election shall be conducted in accordance with the laws of the State of New York.

14. The Court reserves jurisdiction to enter such further Orders, including modification of this Order, as may appear appropriate.

/S/

U.S.D.J.

Dated: New York, New York
March 7, 1974

WOD Stewart DJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
CHAMBERS
JUDGE STEWART
2/7/74

- X

COALITION FOR EDUCATION IN DISTRICT ONE, et al.,

Plaintiffs,

-against-

THE BOARD OF ELECTIONS OF THE CITY OF NEW YORK, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - -X

ORDER SUBSTITUTING ATTORNEYS

73 Civil 3983 CCS

Upon the annexed supplemental affidavit of JOSEPH FROST, duly sworn to the 7th day of February, 1974, and copies of all of the following papers, the originals of which have heretofore been filed, the affidavits of JOSEPH FROST duly sworn to the 31st day of January, 1974, CAROLYN KOZLOWSKY, duly sworn to the 21st day of January, 1974, and the Notice of Appearance dated January 23, 1974 of JOSEPH FROST, ESQ. on behalf of defendant CAROLYN KOZLOWSKY, the written consent of the Corporation Counsel dated February 4th, 1974, and a copy of a letter dated February 6th, 1974 from defendant CAROLYN KOZLOWSKY to the Corporation Counsel, it is

ORDERED, that JOSEPH FROST, ESQ., 32 Broadway, New York, New York 10004 be and he hereby is substituted as the attorney of record for the defendant CAROLYN KOZLOWSKY in her individual capacity in the above entitled action in place and stead of the Corporation Counsel of the City of New York, nunc pro tunc

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as of January 24, 1974, and it is further

ORDERED, that the defendant CAROLYN KOZLOWSKY reserves and shall have the right to make further application to this Court for substitution of attorneys to represent her in her representative capacity as a member of the school board, and it is further

ORDERED, that a copy of this order be served upon all other attorneys appearing in this action.

Dated: New York, New York
February 7, 1974

Leonard B. Carter
United States District Judge